

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 105

HARRY KEYISHIAN, ET AL., APPELLANTS,

vs.

THE BOARD OF REGENTS OF THE UNIVERSITY
OF THE STATE OF NEW YORK, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

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[fol. 1]

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Civil Action No. 10,994

HARRY KEYISHIAN, Buffalo, New York, GEORGE HOCHFELD, Buffalo, New York, NEWTON GARVER, Buffalo, New York, RALPH N. MAUD, Buffalo, New York, and GEORGE E. STARBUCK, Buffalo, New York, Plaintiffs,

—VS.—

BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, Albany, New York, BOARD OF TRUSTEES OF THE STATE UNIVERSITY OF NEW YORK, Albany, New York, STATE UNIVERSITY OF NEW YORK AT BUFFALO, Buffalo, New York, CLIFFORD C. FURNAS, Buffalo, New York, J. LAWRENCE MURRAY, Albany, New York, ARTHUR LEVITT, Albany, New York, DEPARTMENT OF CIVIL SERVICE OF THE STATE OF NEW YORK, Albany, New York, CIVIL SERVICE COMMISSION OF THE STATE OF NEW YORK, Albany, New York, MARY GOODE KRONE, Albany, New York, and ALEXANDER A. FALK, Albany, New York, Defendants.

COMPLAINT—Filed July 8, 1964

[fol. 2] Plaintiffs, above named, by their attorneys, Lipsitz, Green and Fahringer, for their complaint against the defendants herein, allege:

First: This action arises under Section 1 of the Fourteenth Amendment to the Constitution of the United States, as that amendment exists independently of the First Amendment and as that amendment incorporates the First and Fifth Amendments; further, under Article I, Section 10, Clause 1 and Article VI, Clause 2 of the Constitution

of the United States. This action further arises under Section 1343 of Title 28, and Section 1983 of Title 42 of the United States Code, to enjoin the deprivation of rights secured by the Constitution of the United States. The matter in controversy exceeds the sum of ten thousand dollars, exclusive of interest and costs.

Second: This action is brought on behalf not only of plaintiffs, but on behalf of all other persons similarly situated pursuant to Rule 23(a)(3) of Title 28 of the United States Code. Each of the plaintiffs is a member of a class so numerous as to make it impracticable to bring them all before the Court. The character of the rights sought to be enforced for the various classes is several, but there are common questions of law and fact affecting the several rights and common relief is sought. The plaintiffs here will fairly insure the adequate representation of all members of all classes involved.

Third: This action is brought for declaratory relief pursuant to Section 2201 of Title 28 of the United States Code and to obtain an interlocutory and permanent injunction of certain statutes and regulations of the State of New York pursuant to the provisions of Chapter 155 of Title 28 of the United States Code.

Fourth: Harry Keyishian is a term appointee employed by the State University of New York at Buffalo as an Instructor in English, under a contract of employment commencing September, 1961, which has been renewed annually thereafter; on February 14, 1964 he was given notice of non-renewal because he refused to sign what is hereinafter known as the 'Trustees' Certificate, Exhibit "A".

Fifth: George Hochfield is an Associate Professor in the Department of English at the State University of New York at Buffalo, employed for a three-year term commencing September, 1963.

Sixth: Newton Garver is a term appointee employed by the State University of New York at Buffalo as a Lecturer in the Department of Philosophy, under a contract of employment commencing September, 1961, which contract has been renewed annually thereafter.

Seventh: Ralph N. Maud is an Assistant Professor in the Department of English at the State University of New York at Buffalo, employed for a two-year term commencing September, 1963, having originally been employed in September, 1958 for a year term which was renewed annually thereafter.

Eighth: George E. Starbuck was appointed by the State University of New York at Buffalo on the 1st day of October, 1963, under a one-year contract, as a Specialist in Acquisitions, and, in addition, since on or about the 9th day of January, 1964, as a Lecturer in English, which contract has not been honored by defendants since the 18th day of June, 1964.

Ninth: The defendant, Board of Regents of the University of the State of New York (hereinafter called Board of Regents), is a body organized pursuant to the Education Law of the State of New York and is required to administer the University of the State of New York.

Tenth: The defendant, Board of Trustees of the State University of New York (hereinafter called Board of Trustees), is a body organized pursuant to the Education Law of the State of New York and is required to administer the State University of New York.

[fol. 4] Eleventh: The defendant, State University of New York at Buffalo (hereinafter called SUNYAB), is a corporation organized in accordance with the Education Law of the State of New York.

Twelfth: The defendant, Clifford C. Furnas, is President of SUNYAB and is its chief executive officer.

Thirteenth: The defendant, J. Lawrence Murray, is acting head of the State University of New York, and as such is its chief administrative officer, having been appointed, upon information and belief, by the Board of Trustees.

Fourteenth: The defendant, Arthur Levitt, is Comptroller of the State of New York and, upon information and belief, is responsible for all disbursements made relative to plaintiffs herein.

Fifteenth: That the defendant, Department of Civil Service of the State of New York, is a department organized pursuant to the Civil Service Law of the State of New York and is, upon information and belief, the central personnel agency for all departments and agencies of the State Government.

Sixteenth: The defendant, Civil Service Commission, is a body organized pursuant to the Civil Service Law of the State of New York and is charged with the administration of the Civil Service Law.

Seventeenth: The defendant, Mary Goode Krone, is the President of the Civil Service Commission of the State of New York, and head of the defendant, Department of Civil Service of the State of New York.

Eighteenth: The defendant, Alexander A. Falk, is a commissioner of the Civil Service Commission of the State of New York.

Nineteenth: On March 31, 1949, the Governor of the State of New York approved Ch. 360, Laws 1949, being "an act to amend the Education Law in relation to eliminating from the public schools superintendents, teachers and employees who are members of subversive organizations", [fol. 5] and which provisions appear as Section 3022 of the Education Law of the State of New York, popularly known as the "Feinberg Law".

Twentieth: Section 3022 incorporates in full by reference and implements Section 105 of the Civil Service Law

and Section 3021 of the Education Law of the State of New York as follows: Subdivision (1) of Section 3022, as amended by Ch. 681, Laws 1953, directs the Board of Regents to adopt and enforce rules and regulations for the elimination of persons barred from employment in the public school system or any college or institution of higher education owned by the State of New York or any political subdivision thereof, by reason of violation of any of the provisions of Section 105 of the Civil Service Law or Section 3021 of the Education Law.

Twenty-first: That Article XVIII, Section 244 of the Rules of the Board of Regents entitled, "Subversive Activities", adopted July 15, 1949, has been adopted by the Board of Regents pursuant to the provisions of Section 3022 of the Education Law, and, upon information and belief, that these rules and regulations have been distributed to the various agencies and subdivisions of the University of the State of New York for their guidance.

Twenty-second: Section 3022 of the Education Law as applied subjects all employees of all public schools and institutions of higher education owned and operated by the State of New York or any political subdivisions thereof to various rules, requirements, procedures, sanctions and penalties.

Twenty-third: That the Court of Appeals of the State of New York has adjudicated and upheld the constitutionality of Ch. 360, Laws 1949, which statute appears as Section 3022 of the Education Law, amended subsequent to such adjudication by Ch. 681, Laws 1953, which amendment inserts in Subdivision (1) of Section 3022 the words, "... and the faculty members and all other personnel [fol. 6] and employees of any college or other institution of higher education owned and operated by the state or any subdivision thereof ...".

Twenty-fourth: That the Court of Appeals of the State of New York has adjudicated and upheld the constitution-

ality of actions undertaken pursuant to Section 3022 of the Education Law whereby administrative officials of the public school system may demand information relative to subversive activities from employees of state-owned institutions of learning, and whereby such employees may be discharged upon refusal to respond thereto in the manner required.

Twenty-fifth: Upon information and belief, no claim has been made in respect to any one or all of the plaintiffs herein that said plaintiffs are ineligible to be employed by the University of the State of New York by reason of violation of any of the various provisions of Sections 3021 and 3022 of the Education Law, or Section 105 of the Civil Service Law of the State of New York, or of Article XVIII, Section 244 of the Rules of the Board of Regents.

Twenty-sixth: That upon information and belief, the Board of Trustees established on May 10, 1956 the *Ad Hoc* Committee on Security Regulations in Recruitment of Academic Personnel, which committee adopted, on October 11, 1956, a procedure relative to academic appointments, part of which procedure requires the endorsement of a loyalty certificate by all academic appointees.

Twenty-seventh: That the *Ad Hoc* Committee of the Board of Trustees derived its authority to require the aforesaid loyalty certificate from Section 3022 of the Education Law; that the certificate, in its varying forms (copies of which are attached as Exhibits "A" and "B") constitutes a disclaimer of membership in certain communist organizations and an assertion that Article XVIII, Section 244 of the Rules of the Board of Regents entitled "Sub-[fol. 7] versive Activities" which refers therein to Sections 3021 and 3022 of the Education Law, have been read and constitute conditions precedent to the acceptance of or continuation of employment by all academic personnel in institutions of higher learning owned by the State of New York; the said Exhibits "A" and "B" are hereinafter referred to as the Trustees' Certificate.

Twenty-eighth: That upon information and belief, substantially all academic personnel appointed by or having been assimilated into the University of the State of New York since the institution of the procedures adopted by the aforesaid *Ad Hoc* Committee on Security Regulations, have been required to sign the Trustees' Certificate.

Twenty-ninth: That plaintiffs Keyishian, Hochfield, Garver and Maud have been instructed to sign the Trustees' Certificate and have not done so; that in consequence of such, defendants have announced that the above named plaintiffs will be discharged and that their contracts will no longer be honored.

Thirtieth: That under the statutes of the State of New York and the Rules of the Board of Regents and the Board of Trustees, academic personnel accepted for a term have no right to a formal hearing in respect to non-renewal of their terms for failure to endorse the Trustees' Certificate and that, upon information and belief, no hearing will in fact be accorded term appointees in respect to non-renewal of their terms. Under Section 244 of Article XVIII of the Rules of the Board of Regents, Subdivision (2)(e), the Board of Regents declares:

In proceedings against persons serving under contract and not under the provisions of the tenure law, the school authorities shall conduct such hearings on charges as they deem the exigencies warrant, before taking final action on dismissal.

Thirty-first: That plaintiff George E. Starbuck has been directed by various officials of SUNYAB to subscribe an answer to the following question:

[fol. 8] Have you ever advised or taught or were you ever a member of any society or group of persons which taught or advocated the doctrine that the Government of the United States or any political subdivisions thereof should be overthrown or overturned by force, violence or any unlawful means?

Thirty-second: Upon information and belief, defendants claim authority to require plaintiff Starbuck to answer the aforesaid question under Section 105 of the Civil Service Law.

Thirty-third: That plaintiff George E. Starbuck can be prosecuted for perjury for falsely answering the aforesaid question.

Thirty-fourth: That plaintiff George E. Starbuck instituted proceedings on the 5th day of February, 1964, in the Federal District Court for the Western District of New York (Civil Action No. 10,741) for a temporary restraining order and preliminary and permanent injunctions against defendants herein to enjoin said defendants from discharging plaintiff in contravention of their contract of employment on the basis that defendants' actions in respect to George E. Starbuck constituted a denial of due process and of equal protection of the laws as required by Amendment 14, Section 1 of the United States Constitution.

Thirty-fifth: That a temporary restraining order was granted but that the motion for preliminary injunction was denied on the 18th day of June, 1964 and that plaintiff George E. Starbuck thereupon was dismissed by defendants without a hearing and is presently unemployed.

Thirty-sixth: That all plaintiffs except Keyishian and Starbuck have either summer employment at SUNYAB during 1964 or research grants during the summer of 1964 from the State University of New York, pursuant to which each will receive moneys in addition to their respective salaries as employees at SUNYAB.

[fol 9] **Thirty-seventh:** That Section 105(3) of the Civil Service Law, which is incorporated by reference both into Section 3022 of the Education Law and into the Trustee's Certificate, and upon which the oath required of plaintiff Starbuck is based, requires the dismissal of persons coming within its scope "... for the utterance of any treasonable or seditious word ... or the doing of any treasonable

or seditious act . . . ;" that the phrase "seditious word or act" is therein made to mean "... 'criminal anarchy' as defined in the Penal Law".

Thirty-eighth: That "criminal anarchy" and those acts constituting advocacy of criminal anarchy are set forth in Sections 160 and 161 of the Penal Law.

Thirty-ninth: Subdivision (3) of Section 105 of the Civil Service Law was added by the New York State Legislature on the 15th day of April, 1958. The Federal Courts have not adjudicated the constitutionality of either said Subdivision (3) of Section 105 of the Civil Service Law or Section 3021 of the Education Law.

Fortieth: That a certificate which plaintiff Maud and others similarly situated have been required to sign (a copy of which is attached as Exhibit "B") differs from the original Trustees' Certificate as drawn up by the afore-said *Ad Hoc* Committee of the Board of Trustees (a copy of which is attached as Exhibit "A"); that, further, plaintiffs have no knowledge of the individual or individuals who executed such modification nor do plaintiffs have knowledge of the authority under which such modifications were made.

Forty-first: The statutes of the State of New York and the Rules of the Board of Regents, pursuant to which the certificates and oaths referred to in this complaint are claimed to be required, abridge plaintiffs' rights, privileges [fol. 10] and immunities as secured and guaranteed by the First, Fifth and Fourteenth Amendments to the Constitution of the United States, Article I, Section 10, Clause 1, and Article VI, Clause 2 of said Constitution, and said statutes are unconstitutional and void both on their face and as they have been construed and applied to the plaintiffs, and to all other similarly situated.

Forty-second: The failure to accord a hearing to persons refusing to sign such certificates and oaths upon denial of initial appointment or renewal of appointments,

and the failure to accord a hearing to persons under dismissal wherein such persons can explain and have considered their grievances and objections relative to such refusal to sign constitutes a denial of procedural due process. In effect, a refusal to endorse produces inferences of disloyalty and guilt and, moreover, a conclusion of unfitness for employment, which conclusion is arbitrary and discriminatory. Such automatic and summary procedures are unreasonable and lacking in the degree of fairness required by due process since persons refusing to sign are afforded no opportunity to have conscientious objections for their refusal considered, which objections may be based on a *bona fide* belief that the certificate or oath unlawfully proscribes constitutionally protected speech, or upon religious scruples, or upon an uncertainty of what conduct is proscribed due to the vagueness, prolixity and profusion of the certificates and oaths and, more particularly, of the statutes and rules referred to therein and upon which the certificates and oaths are based.

Forty-third: Sections 3021 and 3022 of the Education Law and Section 105 of the Civil Service Law are invalid on their face due to language which is unduly vague, uncertain and broad. Specifically, plaintiffs aver that the requirement that they refrain from "... the utterance of any treasonable or seditious word ..." or from "... the doing of any treasonable or seditious act ..." is a proscription so uncertain of objective measurement or ascertainment as to fall far short of the requirements of due [fol. 11] process. Plaintiffs aver further that the words "criminal anarchy" as they stand alone and as defined in Sections 160 and 161 of the Penal Law and as construed are unconstitutionally vague. Further, the statutes eliminate from academic employment any person who "... advises or teaches the doctrine that the government of the United States ... or of any political subdivision thereof should be overthrown or overturned by ... any unlawful means; or prints, publishes, edits, issues or sells any ... written or printed matter in any form containing or ... ad-

vising . . . the doctrine that the government of the United States or of . . . any political subdivision thereof should be overthrown by . . . any unlawful means, and who . . . embraces the propriety of adopting the doctrine contained therein; or . . . becomes a member of any . . . group of persons which teaches or advocates that the government of the United States or of . . . any political subdivision thereof shall be overthrown by . . . any unlawful means." Plaintiffs aver that the statutory language quoted in the preceding sentence enjoins conduct in terms so patently vague that men of common intelligence must necessarily guess at its meaning and differ as to its application and which language consequently is violative of plaintiffs' rights of due process. Plaintiffs allege further, regardless of the vagueness of the language itself, that the prolixity and profusion of the language and the manifold references in the statutes, rules and certificates herein complained of to interrelated provisions, and the uncertainty as to the identity, effect, or pertinence of certain of said provisions results in a vague and uncertain understanding of what behavior is proscribed and therefore, of itself, constitutes a denial of due process.

Forty-fourth: The statutes herein complained of proscribe and infringe rights of speech, association and religion which are protected by the First and Fourteenth Amendments to the United States Constitution. Plaintiff Keyishian and all others similarly situated are prohibited from engaging in constitutionally protected speech and association and might further incur substantial risk of [fol. 12] unfair prosecution for deviations from a vague and unconstitutionally broad standard. Moreover, all plaintiffs herein are enjoined from conduct clearly protected by the First and Fourteenth Amendments and are especially deterred from engaging in such lawful conduct by the continual investigative and inquisitorial procedures required by the Rules of the Board of Regents. The requirement of said rules that one's superiors report on observed deviations from standards so vague and overly broad as those

presently complained of is especially repugnant to the First Amendment inasmuch as it operates inevitably to deter free speech and to discourage controversial and socially desirable discussion and association. Further, such proscription is not justified by a subordinating regulatory interest which is compelling or by a clear and present danger. The statutes, rules, procedures, certificates, and oaths herein complained of infringe plaintiffs' constitutionally protected rights in the absence of any substantial danger from which the State must necessarily protect itself by resort to such measures.

Forty-fifth: The statutes herein complained of may automatically and permanently proscribe one from serving the government of the State of New York in his chosen profession. Because the statute thus penalizes without the intervening safeguards of a judicial trial it is an unconstitutional bill of attainder.

Forty-sixth: The statutes, rules, certificates and questions herein complained of violate the Fourteenth and Fifth Amendments to the Constitution of the United States inasmuch as plaintiffs and others similarly situated are required to divulge information relative to present and past activities and associations and are thereby made subject to possible prosecution.

Forty-seventh: The statutes and rules, certificates and questionnaires herein complained of provide for inquiries into plaintiffs' indefinite past associations, certain of which associations are made prima facie evidence of disqualification for appointment to or retention in any office or position in the State University of New York. Such inferences work automatically, arbitrarily and without justification and, therefore, contravene the due process clause of the Fourteenth Amendment.

Forty-eighth: The statutes and rules, certificates and questionnaires herein complained of shift the burdens of persuasion and proof to plaintiffs, under threats of dis-

missal or prosecution for perjury or both, and, as such, contravene the due process clause of the Fourteenth Amendment.

Forty-ninth: The statutes and rules, certificates and questionnaires herein complained of are invalid insofar as they deal with matters pre-empted by existing Federal Legislation.

Fiftieth: The statutes and rules, certificates and questionnaires herein complained of disqualify plaintiffs and others from holding positions in the State University of New York upon criteria which bear no reasonable relationship to qualifications of fitness to hold such positions, and, as such, transgress the bounds of due process of the Fourteenth Amendment.

Fifty-first: Defendants have announced that plaintiffs and others similarly situated will be dismissed imminently if they do not sign the Trustees' Certificate. Moreover, defendants have informed plaintiffs Keyishian, Hochfield, Garver and Maud that dismissal proceedings are presently in effect as to said plaintiffs.

Fifty-second: Plaintiff Starbuck has been dismissed without a hearing on the basis of having declined to answer and swear to the question required of him.

Fifty-third: Plaintiffs Keyishian, Hochfield, Garver and Maud have no knowledge of whether a hearing will be accorded them in respect to their dismissal. Defendants accord no right of hearing to plaintiffs herein in respect to non-renewal of their appointments. Moreover, if a hearing should be accorded in respect either to dismissal or to non-renewal of appointments, the inquiry would be [fol. 14] limited to whether plaintiffs had in fact signed the Trustees' Certificate since, upon information and belief, the charge asserted by defendants will be that of insubordination.

Fifty-fourth: Unless the defendants are restrained from enforcing the provisions of the statutes challenged, and

from demanding the signing of the aforesaid certificates and questions, the plaintiffs and others similarly situated will suffer irreparable injury not compensable in monetary damages.

Fifty-fifth: Plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray for the following relief:

1) That a special district court of three judges be instructed to hear and determine this action pursuant to Section 2281 of Title 28 of the United States Code.

2) That pending the hearing and determination by the full court of an application for an interlocutory injunction, that a temporary restraining order be granted, restraining enforcement of the statutes and rules herein complained of and all procedures and proceedings presently pending or to be commenced thereunder or relative thereto and, further, that defendants be ordered to reinstate plaintiffs and all others who have been dismissed or suspended from the State University of New York at Buffalo where such dismissals have been predicated upon a charge of non-compliance with, faulty or alleged untruthful compliance with, or violation of any of the statutes, rules, procedures, certificates or questions herein complained of because of the fact, among other reasons as alleged herein, that irreparable loss and damage will result to plaintiffs unless such temporary restraining order be granted.

3) That the defendants be perpetually enjoined from enforcing the statutes and rules involved and from requiring any certificates, oaths or questions pursuant to the provisions of the statutes and rules herein complained of, and, further, that defendants be ordered to reinstate plaintiffs and all others who have been dismissed or suspended from the State University of New York at Buffalo where such dismissals have been predicated upon a charge of non-compliance with, faulty or alleged untruthful compliance with, or violation of any of the statutes, rules, procedures, certificates or questions herein complained of; and

that pending the final determination of this action, an interlocutory injunction issue to the same effect.

4) That they be compensated for such damages as have, or will have been incurred by them by reason of the deprivation of their rights and privileges which deprivation is the result of the application or enforcement of any of the statutes or rules herein complained of.

5) That Sections 3021 and 3022 of the Education Law and Section 105 of the Civil Service Law of the State of New York, Section 244, Article XVIII of the Rules of the Board of Regents of the State of New York, and all certificates, oaths or questionnaires required under the authority of said statutes and rules be declared to be void, unconstitutional and of no effect, on the grounds alleged in this complaint.

6) For costs and such further relief as to this Court may seem just and proper.

Dated: Buffalo, New York, July 7, 1964.

Lipsitz, Green and Fahringer, By: Richard Lipsitz,
Attorneys for Plaintiffs, Office & Post Office Address,
120 Delaware Avenue, Buffalo, New York
14202.

[fol. 16]

EXHIBIT "A" TO COMPLAINT

STATE UNIVERSITY OF NEW YORK AT BUFFALO CERTIFICATE

Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof cannot be employed by the State University.

Anyone who was previously a member of the Communist Party or of any organization that advocates the violent

overthrow of the Government of the United States or of the State of New York or any political subdivision thereof is directed to confer with the President before signing this certificate.

.....

This is to certify that I have read the publication of the University of the State of New York, 1959, entitled "Regents Rules on Subversive Activities" together with the instructions set forth above and understand that these rules and regulations as well as the laws cited therein are part of the terms of my employment. I further certify that I am not now a member of the Communist Party and that if I have ever been a member of the Communist Party I have communicated that fact to the President of the State University of New York.

Date

Signature

[fol. 17]

EXHIBIT "B" TO COMPLAINT

CERTIFICATE

Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof can not be employed by the State University.

Anyone who was previously a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof is directed to confer with the President before signing this certificate.

This is to certify that I have read the publication of the University of the State of New York, 1959, entitled "Regents

Rules on Subversive Activities" together with the instructions set forth above and understand that these rules and regulations as presented to me, as well as the laws cited therein, except for the Education Commissioner's memorandum, are part of the terms of my employment. I further certify that I am not now a member of the Communist Party of the State of New York or of the United States, and that if I have ever been a member of the Communist Party of the State of New York or of the United States, I have communicated that fact to the President of the State University of New York.

..... Date Signature

[fol. 17b] [File endorsement omitted]

[fol. 18]

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action No. 10,994

[Title omitted]

STIPULATION OF FACT—Filed August 2, 1965

[fol. 19] The following stipulation of fact is entered into by and between Lipsitz, Green and Fahringer (Richard Lipsitz, Esq., of counsel), attorneys for plaintiffs, and John C. Crary, Jr., Esq., attorney for defendants Board of Trustees of the State University of New York, State University of New York at Buffalo, Clifford C. Furnas and J. Lawrence Murray:

1. This stipulation, together with the exhibits attached thereto and the pleadings herein, shall constitute the record of the trial held before the Three-Judge Court appointed herein pursuant to a decision and order dated

May 3, 1965 of the Second Circuit, Court of Appeals, requiring the convening of those judges in accord with the provisions of Title 28, U.S. Code, Section 2284. This stipulation of fact is entered into for the purposes of this action and the parties reserve their respective rights to object to the relevance or materiality of any of such facts to the issue arising herein and to make such contention as they may be advised as to the legal conclusions to be drawn therefrom or the right to relief arising thereon.

2. The title of the action is amended to add as an additional party defendant, Samuel B. Gould, Albany, New York, who is represented in this action by John C. Crary, Jr., Esq.

3. The State University of New York, a corporate body established by the New York State Education Law, employs approximately 17,000 persons (of whom 15,000 are full-time), of which 9,500 are in the unclassified service of the Civil Service (of whom 8,000 are full-time) and are subject to the procedures of the State University of New York for the administration of Section 3022 of the New York State Education Law. Approximately 1,000 full-time and 800 part-time persons are employed by the State University of New York at Buffalo in the unclassified service. Of the persons employed by the State University of New York in the unclassified service at the time of the commencement of this action, the plaintiffs, other than Starbuck, are the only persons who had refused to sign either Ex-[fol. 20] hibit "3" or Exhibit "9" in connection with the continuation of their employment by the State University of New York. Many other persons in the same class as the aforementioned four plaintiffs had objected to the requirement to sign either of said exhibits but at the time this action was commenced, they had done so. At a meeting of between 300 and 400 members of the American Association of University Professors at the State University of New York at Buffalo Chapter certain resolutions, attached hereto and marked Exhibit "1", were adopted.

Plaintiff Starbuck was employed in the classified Civil Service.

4. Plaintiff Keyishian was employed as an Instructor in English by the University of Buffalo commencing September 1961, at a time when the University of Buffalo was not a part of the State University of New York. His appointment was annually renewed through the academic year ending August 1961. On February 14, 1964 he was sent a notice of non-renewal, attached hereto as Exhibit "2". The notice of non-renewal would not have been sent to him, but for his failure as of that time to sign the certificate attached hereto and marked Exhibit "3". Plaintiff Keyishian, during the last year of his employment from September 1963 to August 1964, received a salary of \$6236.00.

The University of Buffalo merged with the State University of New York as of September 1, 1962.

The notice of non-renewal referred to is provided for in the policies of defendant Board of Trustees of the State University of New York, a copy of which is attached hereto and marked Exhibit "4".

5. Plaintiff George Hochfield is an Associate Professor in the Department of English of defendant State University of New York at Buffalo, employed for a three-year term commencing September 1963. His present salary is \$9922.00 per year.

[fol. 21] 6. Plaintiff Newton Garver was employed by defendant State University of New York at Buffalo as a Lecturer in the Department of Philosophy for a term of one year, commencing September 1961, which has been renewed annually thereafter. He is presently employed in the same capacity. His annual salary is \$8355.

7. Plaintiff Ralph N. Maud was an Assistant Professor in English at defendant State University of New York at Buffalo, employed for a two-year term commencing September 1963, having originally been employed in September 1958 for a year term which was renewed annually there-

after. On February 11, 1965, he accepted appointment as Associate Professor with continuing status effective June 1, 1965 under the limitations set forth in a letter dated January 28, 1965 from defendant Samuel B. Gould, attached hereto and marked Exhibit "5", in accordance with a letter dated November 5, 1964 from defendant Gould to defendant Furnas, attached hereto and marked Exhibit "5A". He has resigned such employment as of the end of the current semester, and as of September 1965 will no longer be employed by the defendant State University of New York at Buffalo.

8. The facts pertaining to the employment of plaintiff George E. Starbuck are contained in the transcript of testimony dated March 30 and 31, 1964, together with the exhibits contained therein, from certain proceedings in the case of *George E. Starbuck, Plaintiff, vs. Board of Regents of the State University of New York, et al., Defendants*, Civil Action No. 10,741, United States District Court for the Western District of New York. The said transcript together with the exhibits are attached hereto and marked Exhibit "6".

9. The defendant, Board of Regents of the University of the State of New York, is a body organized pursuant to the New York State Education Law and is required to administer the University of the State of New York.

[fol. 22] 10. The defendant, Board of Trustees of the State University of New York, is a body organized pursuant to the New York State Education Law and is required to administer the State University of New York, a corporation established by the New York State Education Law.

11. The defendant, State University of New York at Buffalo, is an institution owned and operated by the State University of New York. Prior to September 1, 1962, it was the University of Buffalo, a private education corporation.

12. The defendant, Clifford C. Furnas, is president of defendant State University of New York at Buffalo and is its chief executive officer.

13. At the time of the commencement of this action, defendant J. Lawrence Murray, was acting head of the State University of New York and as such was its chief administrative officer, having been appointed by the defendant Board of Trustees of the State University of New York. Such appointment was during a vacancy in the office of president of the State University of New York, a position which was filled by the defendant Samuel R. Gould as of September 1, 1964.

14. The defendant, Arthur Levitt, is Comptroller of the State of New York and is responsible for all disbursements made relative to plaintiffs herein.

15. Defendant, Department of Civil Service of the State of New York, is a department organized pursuant to the New York State Civil Service Law and is the central personnel agency for all departments and agencies of the New York State Government.

16. The defendant, Civil Service Commission of the State of New York, is a body organized pursuant to the New York State Civil Service Law and is charged with the administration of said law.

17. Defendant, Mary Goode Krone, is the president of defendant Civil Service Commission of the State of New York and also head of defendant Department of Civil Service of the State of New York.

[fol. 23] 18. The defendant, Alexander A. Falk, is a commissioner of defendant Civil Service Commission of the State of New York.

19. On March 31, 1949, the Governor of the State of New York approved Chapter 360, Laws 1949, being "an act to amend the Education Law in relation to eliminating from the public schools superintendents, teachers and employees who are members of subversive organizations", and which provisions appear as Section 3022 of the New York State Education Law, popularly known as the "Feinberg Law".

20. Section 3022 incorporates in full by reference and implements Section 105 of the Civil Service Law and Section 3021 of the New York State Education Law as follows: Subdivision (1) of Section 3022, as amended by Chapter 681, Laws 1953, directs the Board of Regents to adopt and enforce rules and regulations for the elimination of persons barred from employment in the public school system or any college or institution of higher education owned by the State of New York or any political subdivision thereof, by reason of violation of any of the provisions of Section 105 of the Civil Service Law or Section 3021 of the New York State Education Law. For precise provisions of these statutes, reference is made to the texts thereof.

21. Article XVIII, Section 244, of the Rules of the Board of Regents of the University of the State of New York, entitled, "Subversive Activities", has been adopted by the Board of Regents pursuant to the provisions of Section 3022 of the New York State Education Law. Attached hereto and marked Exhibit "7" is a booklet containing those rules and other materials. Said booklet was presented to plaintiffs, except plaintiff Starbuck, in connection with the certificates which have been required to be signed by them.

These rules have been made available to the Board of Trustees of the State University of New York and have been utilized by the Board of Trustees of the State University of New York in its procedures for compliance with the Feinberg Law.

[fol. 24] 22. Pursuant to Section 3022 of the Education Law, all employees of all public schools and institutions of higher education owned and operated by the State of New York or any political subdivisions thereof are subject to various rules, requirements, procedures, presumptions and disqualifications.

23. No claim has been made in respect to any one or all of the plaintiffs herein that said plaintiffs are ineligible to be employed by the University of the State of New York

by reason of violation of any of the various provisions of Sections 3021 and 3022 of the Education Law, or Section 105 of the Civil Service Law of the State of New York, or of Article XVIII, Section 244 of the Rules of the Board of Regents.

24. The Board of Trustees of the State University of New York established on May 10, 1956 the Ad Hoc Committee on Security Regulations in Recruitment of Academic Personnel, which committee recommended and the Board of Trustees of the State University of New York adopted on October 11, 1956, a procedure relative to academic appointments, part of which procedure requires the endorsement of a certificate referred to hereinabove by all academic appointees. Attached hereto and marked Exhibit "8" is a copy of that procedure which also contains a form of certificate hereinabove referred to.

25. The adoption of the foregoing procedure was for the purpose of complying with the Feinberg Law. That on October 11, 1956 Resolution numbered 56-98 was adopted by the Board of Trustees of the State University of New York which states in the following language:

"RESOLVED that effective October 11, 1956 all new academic appointments to any unit of the State University of New York shall be made in accordance with the Procedure on New Academic Appointments incorporated into these minutes as Attachment B. (56-98)"

That Exhibit "8", which is the foregoing exhibit, is the procedure referred to in that Resolution.

[fol. 25] 26. Following the adoption of the aforementioned Resolution, all academic personnel appointed by or having been assimilated into the State University of New York, have been required to sign that certificate or in the other form, attached hereto and marked Exhibit "9".

That on or about May 29, 1964, Exhibit "9" was made available to academic employees for the first time. That

the circumstances leading to the availability of Exhibit "9" are explained in a letter dated May 29, 1964 to Peter Nicholls from defendant J. Lawrence Murray, a copy of which is attached hereto as Exhibit "10" with enclosure, which is not the same form as Exhibit "3".

That the enclosure was not acted upon by the Board of Trustees of the State University of New York.

27. Plaintiffs Keyishian, Hochfield, Garver, and Maud have been instructed to sign Exhibit "3" and have not done so. In consequence of such refusal, said four plaintiffs has each been notified by identical letters dated March 20, 1964, a copy of one of which is attached hereto and marked Exhibit "11", and by respective letters dated May 28th and 29th, a copy of each of which is attached hereto and marked Exhibits "12", "13", "14" and "15".

28. Attached hereto and marked Exhibits "16" and "17" are correspondence between plaintiff Maud and defendant Murray, dated June 2, 1964 and June 5, 1964. That plaintiff Maud has not submitted either form of certificate.

29. Under the statutes of the State of New York and the rules of the Board of Regents of the University of the State of New York and the policies of the Board of Trustees of the State University of New York, academic personnel accepted for a term have no right to a formal hearing in respect to non-renewal of their terms. No academic employee will be removed during his fixed term of employment except according to the "procedures provided in Exhibit '7'".

[fol. 26] 30. Plaintiff George E. Starbuck has been directed by various officials of the State University of New York at Buffalo to answer in writing the following question:

"Have you ever advised or taught or were you ever a member of any society or group of persons which taught or advocated the doctrine that the Government of the United States or any political subdivision thereof

to be employed by the University of the State of New York

should be overthrown or overturned by force, violence or any unlawful means?"

That the question above set forth has been adopted pursuant to the requirements of defendant, Department of Civil Service of the State of New York.

Defendants claim authority to require plaintiff Starbuck to answer the aforesaid question under Section 105 of the New York State Civil Service Law.

31. Plaintiff George E. Starbuck can be prosecuted for perjury for falsely answering the aforesaid question.

32. Plaintiff George E. Starbuck instituted proceedings on the 5th day of February, 1964, in the Federal District Court for the Western District of New York (Civil Action No. 10,741) for a temporary restraining order and preliminary and permanent injunctions against defendants herein to enjoin said defendants from discharging plaintiff in contravention of his claim that his alleged contract of employment on the basis that defendants' actions in respect to George E. Starbuck constituted a denial of due process and of equal protection of the laws as required by Amendment 14, Section 1 of the United States Constitution.

33. A temporary restraining order was granted but a motion for preliminary injunction was denied on the 18th day of June, 1964 and that thereupon the employment of plaintiff Starbuck was discontinued without any further proceedings. Such discontinuance was directed by the defendant Civil Service Commission of the State of New York because of the expiration of the certificate by that defendant of his eligibility for employment.

[fol. 27] 34. Until defendant Gould's direction in his letter of November 4, 1964 (Exhibit 5A), promotions or salary adjustments recommended by the State University of New York at Buffalo would not be made or recommended by the administrative officers of the State University of New York in the case of employees who had failed to sign

either the certificate marked Exhibit "3" or the certificate marked Exhibit "9" attached hereto. For this reason, a discretionary salary adjustment of \$326.00 annually was not given to plaintiff Hochfield effective September 3, 1964. Such adjustment was later made effective December 26, 1964. By reason of the withholding of the increase between those two periods, he did not receive a total of \$125.00.

A course of instruction to be taught by plaintiff Garver in the night school at the State University of New York at Buffalo for the first semester of 1964 commencing in September 1964, was cancelled because of his failure to sign either of the certificates. He would have received \$480.00 to conduct those classes.

Plaintiff Maud was not recommended for promotion to Associate Professor, III, effective September 3, 1964, because of his failure to sign either of the aforesaid certificates. However, he was promoted to this position effective January 1965. By reason of his not having been promoted between those two dates, he did not receive a total amount of \$359.68 between those dates. Plaintiff Maud was not appointed to teach a class in the night school at the State University of New York for the fall semester commencing 1964 because of the said such failure on his part. He would have earned \$500.00 if he would have been appointed to teach those classes.

35. On June 10, 1965, at a regular meeting of the Board of Trustees of State University of New York, duly called, and at which a quorum was present and acted throughout, there were unanimously adopted two resolutions of which true and correct copies are hereto attached as Exhibit "18".

[fol. 28] 36. Upon the facts stipulated herein, if it becomes necessary to bring charges against plaintiffs, except plaintiffs Keyishian and Starbuck, leading to the termination of their employment, such charges will be based upon the refusal of those plaintiffs to follow the proscribed procedures of defendant Board of Trustees of the State Uni-

versity of New York, in respect to compliance with the Feinberg Law.

Dated: July , 1965.

Lipsitz, Green and Fahringer, By: Richard Lipsitz,
Attorneys for Plaintiffs.

John C. Crary, Jr., State University Counsel.

Louis J. Lefkowitz, Attorney General of the State of New York, attorney in this action for defendants Board of Regents of the University of the State of New York, Arthur Levitt, Department of Civil Service of the State of New York, Civil Service Commission of the State of New York, Mary Goode Krone and Alexander A. Falk, and not for defendants Board of Trustees of the State University of New York, State University of New York at Buffalo, Clifford C. Furnas, J. Lawrence Murray and Samuel B. Gould, agrees that this stipulation constitutes the record of fact in this case which would have been made by plaintiffs and defendants Board of Trustees of the State University of New York, State University of New York at Buffalo, Clifford C. Furnas, J. Lawrence Murray and Samuel B. Gould, had a trial taken place.

Louis J. Lefkowitz, Attorney General of New York State.

[fol. 29]

EXHIBIT "1" TO STIPULATION OF FACT

The membership of the State University of New York at Buffalo Chapter of the American Association of University Professors met on January 24, 1964 to consider its position in relation to the Feinberg disclaimer certificate required by the Board of Trustees of the State University of New York. It accepted in *toto* the report from its Committee on

Academic Freedom and Tenure. In view of the fact that, in requiring the disclaimer, the State University is acting in response to statutory mandates, the Chapter did not recommend non-compliance by its members. It did, however, adopt the following resolutions:

RESOLUTION

Whereas: Determination of the fitness of faculty persons to teach is a responsibility of an educational institution and relevant inquiry for purposes of such determination is proper; however, any criteria of fitness should be formulated by the faculty and determination of satisfaction of these criteria should be undertaken within the academic community by the faculty.

Whereas: Inquiry into fitness to teach should follow scrupulously the tenets of academic due process and, in general, no single factor should be decisive.

Now, therefore, be it resolved that this Chapter disapproves of the external imposition of a disclaimer requirement as a condition for faculty membership on the ground that it violates these principles; and it objects more broadly to the imposition of disclaimer requirements, believing them to be inconsistent with fundamental standards of academic freedom and scholarly inquiry.

RESOLUTION

Whereas: The Chapter recognizes that some persons, for a variety of reasons, may not comply with the disclaimer requirement.

Now, therefore, be it resolved that the Chapter be vigilant in the protection of the rights of such persons as members of the academic community and directs its officers and appropriate committees to act in this regard.

RESOLUTION

Whereas: The Chapter opposes on principle the disclaimer requirement and the procedures that have led to its imposition.

Now, therefore, be it resolved that the Chapter formally protests against this requirement to the Board of Trustees of the State University of New York and directs the Executive Committee of this Chapter to pursue other avenues for the remedy of a basically unsatisfactory situation.

[fol. 30]

EXHIBIT "2" TO STIPULATION OF FACT

College of Arts and Sciences

Office of the Dean

February 14, 1964

To: Mr. Harry Keyishian

From: Milton C. Albrecht, Dean

In accordance with the policies of the State University Board of Trustees, I am hereby notifying you that it is our intent not to renew your appointment to the faculty of the College of Arts and Sciences for the academic year, 1964-65.

If conditions should exist which would require reconsideration of this action, please inform the chairman of your department, so that he may initiate appropriate procedures.

Although this notice is required, so that it is inevitably formal and legalistic, I would like you to know that I appreciate the services you have rendered the College and our University, and that I wish you well.

MCA/jf

[fol. 31]

EXHIBIT "3" TO STIPULATION OF FACT**CERTIFICATE**

Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof cannot be employed by the State University.

Anyone who was previously a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof is directed to confer with the President before signing this certificate.

.....

This is to certify that I have read the publication of the University of the State of New York, 1959, entitled "Regents Rules on Subversive Activities" together with the instructions set forth above and understand that these rules and regulations as well as the laws cited therein are part of the terms of my employment. I further certify that I am not now a member of the Communist Party and that if I have ever been a member of the Communist Party I have communicated that fact to the President of the State University of New York.

Date

Signature

MCAN

[fol. 32]

EXHIBIT "4" TO STIPULATION OF FACT

STATE UNIVERSITY OF NEW YORK

ARTICLE I. Organization

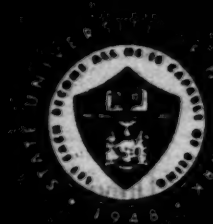
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ARTICLE III. Faculty

ARTICLE IV. Student Body

ARTICLE V. Finance

ARTICLE VI. Miscellaneous



State University of New York

ARTICLE I. Designation

ARTICLE II. Appointment

ARTICLE III. Dismissal

ARTICLE IV. University

ARTICLE V. Composition

ARTICLE VI. Voting Faculty

ARTICLE VII. Resolutions

ARTICLE VIII. Faculty Senate

ARTICLE IX. Establishment and Purpose

ARTICLE X. Name

ARTICLE XI. Purpose



POLICIES
of the
BOARD OF TRUSTEES

STATE UNIVERSITY OF NEW YORK

Policies of the

Board of Trustees

relating to

University Officers, University Faculty, Faculty Senate, College
Officers and Organization, College Faculty, Appointment of
Academic Staff, Recruitment, Promotion, Transfer, Leaves of
Absence, Terminations of Service, and Retirement



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Articles III, V, and VIII were originally reserved by the Board of Trustees to set forth their policies on University Responsibility and Organization; University Conferences and Committees; and Councils, respectively.

Article I**CONSTRUCTION AND APPLICATION**

§ 1. *Construction.* These Policies are a general statement of policy only and shall in no way limit the authority of the Board of Trustees with respect to any matter contained herein. Notwithstanding anything contained in these Policies, the Board of Trustees shall retain full and unrestricted power and authority to appoint, reappoint, or terminate the services of any member of the academic or non-academic staff of the University, to modify these Policies in whole or in part, and to otherwise conduct the affairs of the University.

§ 2. *Application.* These Policies shall apply only to the State-operated colleges of the University, except where the statutory or contract colleges are specifically included.

Article II**DEFINITIONS**

§ 1. *Terms.* As used in these Policies, unless otherwise specified, the following terms shall mean:

- (a) "University." State University of New York.
- (b) "Board of Trustees." The Board of Trustees of State University of New York.
- (c) "President." The President of State University of New York.
- (d) "College." A State-operated institution of State University of New York as enumerated in Article III, Title A, Section 1, Paragraph (a) of these Policies.
- (e) "Contract college." A statutory or contract college of State University of New York as enumerated in Article III, Title A, Section 1, Paragraph (b) of these Policies.
- (f) "Council." A council for a college as provided for by Section 356 of the Education Law.

(g) "Chief administrative officer." The head of a college or contract college, as the case may be, whether called president, dean, provost, director or otherwise.

(h) "Academic staff." The staff comprised of those persons having full academic rank or qualified academic rank.

(i) "Full academic rank." Rank held by those members of the academic staff having the titles of professor, institute professor, associate professor, institute associate professor, assistant professor, institute assistant professor, instructor, institute instructor, assistant instructor and institute assistant instructor, including geographic full-time faculty members having such titles. A geographic full-time faculty member is a person serving on the faculty of a medical center who is not employed on a full-time basis for the purpose of fixing compensation payable by the State but all of whose professional services and activities are conducted at the medical center or its affiliated hospitals and are available to the State on a full-time basis for clinical and instructional purposes.

(j) "Qualified academic rank." Rank held by those members of the academic staff having titles of full academic rank preceded by the designations "clinical" or "visiting," or other titles followed by titles of full academic rank in parentheses.

Article IV

UNIVERSITY OFFICERS

Title A. President

§ 1. *Appointment.* The President shall be appointed by the Board of Trustees and shall serve at its pleasure.

§ 2. *Chief Executive Officer.* The President shall be the chief executive officer of the University. He shall execute and enforce these Policies and shall perform such other duties as may be assigned by the Board of Trustees. The President shall make all appointments of employees, other than officers, to positions in the central office of the University in the classified service of the civil service of the State.

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§ 3. *Assignment of Powers and Duties.* The President may assign to the officers, faculty and staff of the University powers, duties and responsibilities, and they shall be responsible to him and the Board of Trustees for the performance thereof, as well as for those powers, duties and responsibilities specifically vested in them by these Policies.

§ 4. *Committees.* The President may establish and appoint such *ad hoc* University committees as he may deem advisable to assist him in the development of specific programs and policies in the administration of the University. He shall be a member, *ex officio*, of all such committees.

§ 5. *Annual Report.* On or before December first of each year, the President shall make an annual report to the Board of Trustees for the previous year, concerning the affairs of the University and his recommendations with respect thereto.

Title B. Secretary of the State University

§ 1. *Appointment.* The Secretary of the State University shall be appointed by the Board of Trustees and shall serve at its pleasure.

§ 2. *Responsibilities.* The Secretary of the State University shall serve as secretary of the Board and its committees, shall keep records of their proceedings and shall furnish minutes of such proceedings to the members of the Board and its committees, respectively. He shall be the custodian of the University seal. He shall also maintain a complete file of all reports of the Board and its committees and perform such other duties as may be assigned by the Board or any of its committees. He shall perform such other powers and duties and have such other responsibilities, not inconsistent with his responsibilities to the Board of Trustees, as may be assigned by the President.

Title C. State University Counsel

§ 1. *Appointment.* The State University Counsel shall be appointed by the Board of Trustees upon recommendation of the President and shall serve at the pleasure of the Board.

§ 2. *Responsibilities.* The State University Counsel shall be the legal adviser to the University. He shall provide legal advice and

opinions for the Board of Trustees and officers of the University on matters concerning University affairs. He shall, when requested by the Board of Trustees or the President, conduct negotiations and prepare legal documents for the University. He shall, when requested by the Board of Trustees or the President, represent the University in legal actions.

Title D. Executive Officers

§ 1. *Designation.* In addition to the President, the executive officers of the University shall be the Vice-President for Administration, Provost, Executive Dean for Teacher Education, Executive Dean for Institutes and Community Colleges, Controller, and University Architect.

§ 2. *Appointment.* The Board of Trustees shall appoint all executive officers of the University. The President shall bring recommendations for the appointment of such officers to the Board of Trustees.

Title E. University Administrative Officers

§ 1. *Designation.* In addition to the University executive officers there shall be such University administrative officers as may be determined by the President with the consent of the Board of Trustees.

§ 2. *Appointment.* Appointments of University administrative officers at annual base salaries of under \$15,000 shall be made by the President, and such appointees shall serve at his pleasure. Appointments of University administrative officers at annual base salaries of \$15,000 or more shall be made by the Board of Trustees, after receiving the recommendation of the President, and such appointees shall serve at the pleasure of the Board of Trustees.

§ 3. *Responsibilities.* University administrative officers shall have such powers, duties and responsibilities as may be assigned by the President.

Article VI

UNIVERSITY FACULTY

§ 1. *Composition.* The University faculty shall be comprised of the President, who shall be the presiding officer, the Vice-President for Administration, the Provost, the executive deans, the chief ad-

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ministrative officer of each college and all members of the academic staff of the University.

§ 2. *Voting Faculty.* The President, the Vice-President for Administration, the Provost, the executive deans, the chief administrative officer of each college and those members of the academic staff having full academic rank, except instructors and institute instructors with less than one year of service within the University, assistant instructors, institute assistant instructors and persons having temporary appointments, shall be voting members of the University faculty, each of whom shall be entitled to one vote.

§ 3. *Responsibilities.* The University faculty shall be responsible for the conduct of the University's instruction, research and service programs.

Article VII

FACULTY SENATE

Title A. Establishment and Purposes

§ 1. *Name.* There shall be a Faculty Senate of State University of New York.

§ 2. *Purposes.* The Senate shall serve the following University-wide purposes:

a. To study matters relating to over-all University faculty and educational problems and educational policies and programs and in those areas:

1. To provide an opportunity for the faculties of the University to act in an advisory, consultative, and planning capacity to the President of the University.

2. To provide a forum for the consideration of matters of mutual interest to the faculties of the University.

3. To provide a means for the interchange of ideas among the faculties of the University and between the faculties and the University administration.

b. To serve such other functions as may be determined by the President of the University and the Senate, and approved by the Board of Trustees.

Title B. Membership

§ 1. *Composition.* The Senate shall consist of the President of the University, two University representatives having University-wide responsibilities, four faculty representatives from the State University of New York at Buffalo, and one faculty representative from each of the remaining State-operated units and contract colleges.

§ 2. *Election and Appointment.* The President of the University shall appoint the two University representatives. The faculty of each State-operated unit and contract college shall, by secret ballot and majority vote, elect their own representatives. Such representatives shall be elected from a slate of two or more candidates nominated by secret ballot or by an elected faculty nominating committee.

§ 3. *Alternates.* The President of the University shall also appoint two alternate University representatives having University-wide responsibilities. The faculty of each State-operated unit and contract college shall also elect alternate representatives. Such appointments shall be made and elections held at the same time and in the same manner as for regular representatives. Alternative representatives shall serve for the same terms as the representatives for whom they are alternates. Alternate representatives shall serve in the absence or inability to act of the representatives for whom they are alternates and, in that event, such alternate representatives shall have and exercise all the powers and duties of the representatives for whom they are alternates.

§ 4. *Terms.* The University representatives shall serve at the pleasure of the President of the University. Each representative of a State-operated unit or contract college faculty shall serve for a term of three years; provided, however, that no such representative shall serve as a member of the Senate after the termination of his status as a member of the faculty of the State-operated unit or contract college from which he was elected.

§ 5. *Re-election.* No representative of a State-operated unit or contract college faculty who has served a full three-year term as a member of the Senate shall be eligible to serve again as a member of the Senate until the expiration of one year from the end of his last preceding term. This section shall not be applicable to alternate representatives.

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§ 6. *Vacancies.* In the event that a Senator is to be away from the campus on leave of absence for a period in excess of one academic year, the appropriate faculty will hold another election to fill his unexpired term in the same manner as the original election. In this instance, it is to be understood that his alternate would be eligible to succeed him if elected. The foregoing provision would also apply in the case of a vacancy of similar duration in the position of alternate. In the event that both the Senator and his alternate are simultaneously away from the campus on sabbatical or other leave of absence for a period in excess of four months during the academic year, the appropriate faculty will hold another election to fill the unexpired terms.

Title C. Officers

§ 1. *Chairman.* The President of the University shall serve as Chairman of the Senate. He shall be the presiding officer of the Senate.

§ 2. *Vice-Chairman.* Beginning with the term commencing on July 1, 1963, the Senate shall elect one of its members to serve as Vice-Chairman for a term of two years. The Vice-Chairman shall serve as, and exercise the powers and duties of, the Chairman during the Chairman's absence or inability to act. He shall exercise such other powers and duties as may be delegated to him by the Chairman. No person shall be eligible to serve as Vice-Chairman until he has served as a regular member of the Senate for at least one year. Any regular member of the Senate shall be eligible to serve as Vice-Chairman for one year beyond the expiration of his three-year term as Senate member. In such case, the Vice-Chairman shall become a non-voting member of the Senate and his faculty shall be represented by his regularly-elected successor.

§ 3. *Secretary.* The Senate shall elect one of its members to serve as Secretary for a term of one year commencing the first day of July. However, beginning with the term commencing on July 1, 1964, the Senate shall elect one of its members to serve as Secretary for a term of two years. The Secretary shall make and keep minutes of the Senate and shall be custodian of all other records of the Senate and shall serve as a voting member of and secretary to each of the standing committees of the Senate. He shall exercise such other powers and duties as may be delegated to him by the Chairman. No person shall

be eligible to serve as Secretary until he has served as a regular member of the Senate for at least one year. Any regular member of the Senate shall be eligible to serve as Secretary for one year beyond the expiration of his three-year term as Senate member. In such case, the Secretary shall become a non-voting member of the Senate and his faculty shall be represented by his regularly elected successor.

§ 4. *Vacancies.* A vacancy in the office of Vice-Chairman or Secretary shall be filled for the unexpired term in the same manner as the original election, at the next succeeding meeting of the Senate following the occurrence of the vacancy. In the interim the Chairman may designate a member of the Senate to serve in an acting capacity until the vacancy is filled.

Title D. Meetings

§ 1. *Regular Meetings.* Regular meetings of the Senate shall be held twice a year at such times and places as may be designated by the Chairman.

§ 2. *Special Meetings.* Special meetings of the Senate may be called by the Chairman, in his discretion, and shall be called by him upon the written request of the Executive Committee or at least one-fourth of the members of the Senate. The Chairman shall designate the times and places of such special meetings.

Title E. Committees

§ 1. *Executive Committee.* There shall be an Executive Committee which shall be comprised of the Senate Chairman, Vice-Chairman, Secretary and one of the two University representatives, whom the Chairman shall designate to serve, and five other members of the Senate who shall be elected by the Senate. Such elected representatives shall serve for terms of one year commencing July 1 of each year. They shall be eligible for reappointment. The Vice-Chairman shall serve as Chairman of the Executive Committee. The Executive Committee shall exercise such powers and duties as may be conferred upon it by the Senate.

§ 2. *Standing Committees.* The Senate may establish such other standing committees as it deems advisable and shall prescribe the functions of such committees. The chairman and members of such standing committees shall be appointed by the Executive Committee

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and shall serve for terms of one year commencing July 1 of each year. They shall be eligible for reappointment. The Chairman of the Senate, the Secretary of the Senate, and one of the two University representatives whom the Chairman shall designate to serve shall also be members of every standing committee.

§ 3. *Ad Hoc Committees.* The Senate may establish such *ad hoc* committees as it deems advisable and shall prescribe the functions of such committees. The chairmen and members of such committees shall be appointed by the Chairman of the Senate and shall serve until the committee is discharged by action of the Senate. The Chairman of the Senate and one of the two University representatives whom he shall designate to serve shall also be members of every *ad hoc* committee.

§ 4. *Reports.* All committee reports shall be addressed and made to the Senate.

Title F. By-Laws

§ 1. *Adoption.* The Senate may adopt, amend or repeal such by-laws as it deems advisable, consistent with this Article VII, governing its activities and procedures.

Title G. Amendments

§ 1. *Procedure.* Proposed amendments to this Article VII may be recommended to the Board of Trustees by a majority vote of the members of the Senate, ratified by the faculties of three-fourths of the State-operated units and contract colleges, by secret ballot, and approved by the President of the University.

Article IX

COLLEGE OFFICERS AND ORGANIZATION

Title A. Chief Administrative Officer

§ 1. *Appointment.* There shall be a chief administrative officer of each college. He shall be appointed by the Board of Trustees, after receipt of the recommendations of the President and the college council, and shall serve at the pleasure of the Board of Trustees. Before making their recommendations the President and the college

council shall consult with the committee of the college faculty designated for such purpose by the faculty.

§ 2. *Responsibilities.* The chief administrative officer of each college shall be responsible to the President and the Board of Trustees for, and shall administer, the college for which he serves, and shall promote its development and effectiveness. He shall supervise the members of the academic and non-academic staff of such college. He shall recommend to the President and the Board of Trustees persons for appointment as members of the academic staff of the college. He shall prepare and recommend the annual budget requests of the college. He shall report and make recommendations to the President and the Board of Trustees and the college council concerning the operation, plans and development of the college. He shall make all appointments of employees, other than officers, to positions at his college in the classified service of the civil service of the State.

§ 3. *Communications to President.* The chief administrative officer of each college shall transmit his communications and recommendations to the President through the appropriate executive dean, but this provision shall not be construed to preclude direct communication between him and the President.

§ 4. *Handbook.* The chief administrative officer of each college shall be responsible for the preparation and publication of a college handbook, subject to the approval of the President. Such handbook should include an administrative organization chart, a statement of administrative responsibilities, faculty by-laws, local policies and such other information concerning the college as he may deem advisable and shall be made available to all members of the academic staff of the college.

§ 5. *Annual Reports.* On or before September 1 of each year the chief administrative officer of each college shall make an annual report to the Board of Trustees and the President and the college council for the previous year, concerning the affairs of the college and his recommendations with respect thereto.

Title B. College Administrative Officers

§ 1. *Designation.* There shall be such college administrative officers for each college as may be determined by the President, after

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receiving the recommendation of the chief administrative officer of the college.

§ 2. *Appointment.* Appointments of college administrative officers at annual base salaries of under \$15,000 shall be made by the President, after receiving the recommendation of the chief administrative officer of the college concerned, and such appointees shall serve at the pleasure of the President. Appointments of college administrative officers at annual base salaries of \$15,000 or more shall be made by the Board of Trustees, after receiving the recommendation of the President, which recommendation shall be made by him after receiving the recommendation of the chief administrative officer of the college, and such appointees shall serve at the pleasure of the Board of Trustees.

§ 3. *Responsibilities.* College administrative officers shall have such powers, duties and responsibilities as may be assigned by the chief administrative officer of the college.

Title C. Chairmen of Departments and Divisions

§ 1. *Designation.* The members of the academic staff of each college in charge of the departments or divisions of such college shall be designated as chairmen of such departments or divisions, which designations shall be in addition to their academic rank.

§ 2. *Term.* Chairmen of departments or divisions of colleges shall be designated by the President, after receiving the recommendation of the chief administrative officer of the college. Such designations shall be for renewable periods of three years; provided, however, that the President may relieve a designee of his duties as chairman at any time.

§ 3. *Termination of Appointment as Chairman.* If the Chairman of a department or division of a college is relieved of his duties as chairman he shall, unless otherwise provided by the Board of Trustees, retain such rights and privileges as he may have by virtue of his academic rank.

§ 4. *Responsibilities.* The chairmen of departments and divisions of a college shall be responsible to the chief administrative officer of the college for the supervision of the personnel and educational program of the departments or divisions for which they serve.

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They shall have such other powers, duties and responsibilities as may be assigned by the chief administrative officer of the college.

Title D. College Administrative Organization

§ 1. *Plan.* The chief administrative officer of each college shall prepare an organization chart of the college and an accompanying description of the powers, duties and responsibilities of the administrative officers and chairmen of the departments and divisions of the college, subject to the approval of the President.

Title E. College Administrative Conference

§ 1. *Composition.* There shall be a college administrative conference of each college which shall be comprised of the President, the executive dean having jurisdiction over the college, the chief administrative officer of the college, the chairmen of the departments and divisions of the college and such other persons as may be designated by the chief administrative officer of the college. The President, in his absence the executive dean having jurisdiction over the college, and in the absence of both, the chief administrative officer of the college, shall be the presiding officer of each college administrative conference.

§ 2. *Purpose.* Each college administrative conference shall act as an advisory and consultative body to the chief administrative officer of the college and it shall consider such matters as may be presented to it by its presiding officer.

§ 3. *Meetings.* Each college administrative conference shall meet at the call of the chief administrative officer of the college.

Title F. Distinguished Service Professors

§ 1. *Designation.* Members of the academic staff holding continuing appointments as professors who have distinguished themselves in their profession may be designated as distinguished service professors, by action of the Board of Trustees.

§ 2. *Privileges.* Designation as a distinguished service professor shall be an honorary designation only, and shall not carry with it any other rights or privileges.

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Article X**COLLEGE FACULTY**

§ 1. *Composition.* The faculty of each college shall be comprised of the President, the executive dean having jurisdiction over the college, the chief administrative officer of the college, the members of the academic staff of the college, and college administrative officers other than the chief administrative officer whose positions are in the unclassified service.

§ 2. *Presiding Officer.* The President, in his absence the executive dean having jurisdiction over the college, and in the absence of both, the chief administrative officer of the college, shall be the presiding officer of the faculty of each college.

§ 3. *Voting Faculty.* The President, the executive dean having jurisdiction over the college, the chief administrative officer of the college, college administrative officers other than the chief administrative officer whose positions are in the unclassified service and those members of the academic staff of the college having full academic rank, except instructors and institute instructors with less than one year of service in the college, assistant instructors, institute assistant instructors and persons having temporary appointments shall be voting members of the faculty of such college, each of whom shall be entitled to one vote.

§ 4. *Responsibility.* The faculty of each college shall participate in the development of the educational program of the college and shall be responsible for the conduct of the college's instruction, research and service programs.

§ 5. *By-Laws.* The faculty of each college shall prepare and adopt by-laws which shall contain certain provisions for committees and their responsibilities, procedures for the calling and conduct of faculty meetings and elections and provisions for such other matters of organization and procedure as may be necessary for the performance of their responsibilities. Such by-laws, and amendments thereof, shall be subject to the approval of the chief administrative officer of the college, the Board of Trustees and the President.

Article XI

APPOINTMENT OF ACADEMIC STAFF

Title A. Types of Appointment

§ 1. *Continuing Appointment.* A continuing appointment shall be a full-time, including geographic full-time, appointment to a position of full academic rank for an indefinite period which, once granted, shall not be affected by changes in such rank and shall continue until terminated in accordance with these Policies.

§ 2. *Term Appointment.* A term appointment shall be an appointment to the academic staff for a specified, limited period which, except as otherwise provided for by these Policies, shall automatically expire at the end of that period, unless terminated earlier in accordance with these Policies.

§ 3. *Temporary Appointment.* A temporary appointment shall be an appointment to the academic staff for a temporary, unspecified period, which may be terminated at will at any time.

Title B. Methods of Appointment

§ 1. *Continuing or over \$15,000.* Continuing appointments and appointments to the academic staff at an annual base salary of \$15,000 or more shall be made by the Board of Trustees, after receiving the recommendation of the President, which recommendation, in the case of an appointment to the academic staff of a college, shall be made by him after receiving the recommendation of the chief administrative officer of the college.

§ 2. *Other.* All other appointments to the academic staff shall be made by the President, which, in the case of an appointment to the academic staff of a college, shall be made by him after receiving the recommendation of the chief administrative officer of the college. The President shall report all such appointments to the Board of Trustees.

§ 3. *Procedure for Appointments.* All appointments to the academic staff on or after October 11, 1956 shall be made only upon compliance with the Procedure on New Academic Appointments, adopted by the Board of Trustees at its regular meeting of October 11, 1956.

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Title C. Periods of Appointment

§ 1. *Professors, Institute Professors, Associate Professors and Institute Associate Professors.* Professors, institute professors, associate professors and institute associate professors, serving on a full-time basis, who have not otherwise been granted a continuing appointment, shall be granted either a continuing appointment or a term appointment for a period of not exceeding three years. Reappointment at the end of such a term appointment shall be a continuing appointment.

§ 2. *Assistant Professors and Institute Assistant Professors.* Assistant professors and institute assistant professors, serving on a full-time basis, who have not otherwise been granted a continuing appointment pursuant to Section 3 of this Title C, shall be granted term appointments for periods of not exceeding three years, which may be renewed.

§ 3. *Eligibility for Continuing Appointment.* Notwithstanding anything contained in this Title C, when an assistant professor or an institute assistant professor holding a term appointment has completed seven consecutive years of service within the University in the position of assistant professor or institute assistant professor, or a combination thereof, his term appointment shall be deemed to be terminated as of that time, he shall no longer be eligible for a term appointment and he shall thereupon be considered for a continuing appointment. Reappointment at the end of such seven-year period of service shall be a continuing appointment. In computing consecutive years of service for the purpose of this Section 3, periods of vacation leave, periods of sick leave with salary and periods of sabbatical leave, shall be included; periods of leaves of absence other than vacation leave, sick leave with salary and sabbatical leave, and periods of part-time service, shall not be included, but shall not be deemed an interruption of otherwise consecutive service.

§ 4. *Instructors, Institute Instructors, Assistant Instructors and Institute Assistant Instructors.* Instructors, institute instructors, assistant instructors and institute assistant instructors, serving on a full-time basis, shall be granted term appointments for periods of not exceeding three years, which may be renewed.

§ 5. *Qualified Academic Rank.* Persons holding qualified academic rank, and who are serving on a full-time basis, shall be granted

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term appointments with respect to such qualified academic rank for periods of not exceeding three years, which may be renewed; provided, however, that upon the termination of the services of such persons in their other positions within the University, such term appointments with respect to qualified academic rank shall be deemed terminated as of that time.

§ 6. *Temporary Service.* Persons having full or qualified academic rank who serve for temporary unspecified periods shall be granted temporary appointments.

§ 7. *Part-Time Service.* Persons having full or qualified academic rank who serve on a part-time basis shall be granted temporary appointments; provided, however, that members of the academic staff of a college of medicine serving on a part-time basis, who have been designated as chairmen of departments or divisions of such college, shall be granted term appointments for periods of not exceeding three years, which may be renewed.

Title D. Notices

§ 1. *Appointments, Reappointments and Changes in Status.* The President or his designee shall notify members of the academic staff promptly, in writing, of their appointments, reappointments, promotions, changes in status or other changes in the terms or conditions of their positions.

§ 2. *Term Appointments.* The President or his designee shall, in writing, notify members of the academic staff holding term appointments whether or not their terms will be renewed or, if they are eligible for continuing appointments, whether or not they will be granted continuing appointments. Such notices shall be given as far in advance as feasible and ordinarily not later than February 15 preceding the expiration of their terms for persons appointed for the regular appointment year, or a comparable length of time for other terms.

Title E. Salary Periods and Appointment Year

§ 1. *Ten- and Twelve-Month Salary Periods.* The annual salaries of members of the academic staff, other than persons having temporary appointments, shall be paid over periods of ten months or twelve months, as provided by the terms of their appointments and,

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Unless terms and conditions of their appointments otherwise provide, all such persons shall be deemed to be serving full-time for the purposes of these Policies regardless of whether they are paid their annual salaries over periods of ten months or twelve months.

§ 2. *Appointment Year.* Unless terms and conditions of their appointments otherwise provide, the regular appointment year for members of the academic staff shall be from September 1 through August 31.

Title F. Nepotism

§ 1. *Prohibition.* No parent, child, brother, sister, husband or wife of any member of the academic or non-academic staff of any college, other than a full-time student employed on a part-time basis, shall be appointed to any position or employment at such college, except that where members serving on the academic or non-academic staff marry each other neither shall be disqualified by reason of this Section 1, but both shall not serve within the same department of the college.

§ 2. *Temporary Service.* Notwithstanding the prohibitions provided for by Section 1 of this Title F, persons may be employed on a temporary basis for periods of not to exceed one month, with the approval of the chief administrative officer of the college concerned.

§ 3. *Waiver.* The President may, in his discretion, waive the prohibitions provided for by Section 1 of this Title F in specific cases where he believes special circumstances warrant such waiver.

Title G. Academic Freedom

It is the policy of the University to maintain and encourage full freedom, within the law, of inquiry, teaching and research. In the exercise of this freedom the faculty member may, without limitation, discuss his own subject in the classroom; he may not, however, claim as his right the privilege of discussing in his classroom controversial matter which has no relation to his subject. In his role as citizen, the faculty member has the same freedoms as other citizens. He should be mindful, however, that in his extramural utterances he has an obligation to indicate that he is not an institutional spokesman.

Article XII

RECRUITMENT, PROMOTION AND TRANSFER

Title A. Recruitment

§ 1. *Procedure.* The chief administrative officer of each college shall consult members of the college faculty in the recruitment and selection of prospective appointees to the academic staff of the college but he shall determine the persons to be recommended for appointment.

Title B. Promotion

§ 1. *Procedure.* The chief administrative officer of each college shall make recommendations to the President for promotions of members of the academic staff of such college. He shall consult members of the college faculty before making such recommendations. Each such recommendation for promotion shall be accompanied by a summary of the background, training, experience and accomplishments of the person recommended for promotion.

§ 2. *Evaluation.* The qualities to be considered in evaluating members of the academic staff for promotion shall be those which determine their effectiveness in performing their prescribed duties and their general contribution to the aims of the University. Specifically, such evaluations shall include consideration of such of the following factors as relate to the particular type of responsibility with which the faculty member is concerned:

- (a) Mastery of subject matter—as demonstrated by such things as advanced degrees, licenses, honors and awards and reputation in the subject matter field.
- (b) Effectiveness in teaching—as demonstrated by such things as judgment of colleagues, development of teaching materials or new courses and student reaction.
- (c) Scholarly ability—as demonstrated by such things as success in developing and carrying out significant research work in the subject matter field, publications and reputation among colleagues.
- (d) Effectiveness of university service—as demonstrated by such things as successful committee work, administrative work and

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work with students or community in addition to formal teacher-student relationships.

- (e) Continuing growth—as demonstrated by such things as reading, ~~research or~~ other activities to keep abreast of current developments in his field and being able to handle successfully increased responsibility.

§ 3. *Eligibility.* No minimum length of service in any academic rank shall be required for eligibility for promotion.

Title C. Transfer

§ 1. *Policy.* Members of the academic staff who desire to transfer to vacancies in other colleges or contract colleges within the University shall be given consideration for such vacancies.

§ 2. *Consent.* No member of the academic staff shall be transferred to another college or contract college within the University without his consent.

§ 3. *Placement.* Members of the academic staff whose services are satisfactory but whose services are terminated because of change in program, lack of promotional opportunity or otherwise through no fault of their own and who desire to transfer to other colleges or contract colleges within the University shall be given special consideration for appointment to appropriate available positions in such other colleges.

Article XIII LEAVES OF ABSENCE

Title A. Vacation Leave

§ 1. *Twelve-Month Salary Periods.* Members of the academic staff, serving on a full-time basis, other than persons having temporary appointments, who receive their annual salaries over periods of twelve months, shall be granted annual vacation leaves with full salary of one month during each year of their service within the University; provided, however, that such persons who, during any year, have served for less than one year and whose service has been terminated other than by resignation, shall be granted annual vacation leaves with full salary of periods computed on the basis of one-

eleventh of one month for each month of service. Members of the academic staff having term appointments and serving on a part-time basis shall be granted vacation leaves in accordance with this Section 1 on a pro-rated basis.

§ 2. *Ten-Month Salary Periods.* Members of the academic staff, other than persons having temporary appointments, who receive their annual salaries over periods of ten months, shall not be granted any annual vacation leaves with salary, but shall be granted annual vacation leaves without salary of two months during each year of their service within the University.

§ 3. *Academic Holidays.* Academic holidays regularly scheduled by each college during the academic year, in accordance with its program requirements, shall not be considered vacation leave, and vacation leave shall not be reduced by such academic holidays.

§ 4. *Accumulation.* Vacation leaves shall not be cumulative from year to year and shall be taken at such times as may be approved by the chief administrative officer of the college concerned.

Title B. Sick Leave

§ 1. *Authorization by College.* Members of the academic staff, other than persons having temporary appointments, who are unable to perform their regularly assigned duties because of illness, shall be granted sick leave with full salary by the chief administrative officer of the college concerned, for not to exceed a total of one month during each year of service within the University for those persons having one year or more of service within the University, and for not to exceed a total of one-half of a month for those persons having less than one year of service within the University.

§ 2. *Authorization by President.* The President, after receiving the recommendation of the chief administrative officer of a college, may grant members of the academic staff of such college, other than persons having temporary appointments, sick leave with full salary for not to exceed a total of three months during each year of service within the University.

§ 3. *Authorization by Board of Trustees.* The Board of Trustees, after receiving the recommendation of the President, may grant members of the academic staff, other than persons having temporary

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appointments, sick leave for not to exceed a total leave in any one case of two years, comprised of not more than six months with full salary, six months with half salary and one year without salary.

§ 4. *Substitutes.* During the absence on sick leave of members of the academic staff of a college, the chief administrative officer of such college shall make appropriate arrangements for carrying on the activities of such college with due regard to the reasonable work load of the other members of the academic staff, and such persons on sick leave shall not be required or permitted to contribute toward the salary of substitutes during their absence.

Title C. Maternity Leave

§ 1. *Report.* Members of the academic staff who become pregnant shall report the existence of their pregnancy to the chief administrative officer of their college as soon as possible, and ordinarily not later than the fourth month of pregnancy.

§ 2. *Leave.* The chief administrative officer of the college concerned shall grant such pregnant persons, other than persons having temporary appointments, a leave of absence without pay, effective at such date as he may determine, until one year after the birth of the child; provided, however, that such persons may return to service at an earlier date, with the approval of the chief administrative officer of the college.

§ 3. *Extension.* At the request of such a person, and after receiving the recommendation of the President, the Board of Trustees may grant further extensions of such leaves of absence.

§ 4. *Sick Leave.* Sick leave shall not be granted for maternity purposes.

Title D. Sabbatical Leave

§ 1. *Policy.* Sabbatical leaves for professional development may be made available to members of the academic staff who meet the requirements set forth in this Title D. The objective of such leave is to increase each such person's value to the University and thereby improve and enrich its program. Such leave shall not be regarded as a reward for service nor as a vacation or rest period occurring automatically at stated intervals.

[fol. 61]

§ 2. *Purpose.* Sabbatical leaves shall be granted for planned travel, study, formal education, research, writing or other experience of professional value.

§ 3. *Eligibility.* Members of the academic staff having continuing appointments, who have completed at least six consecutive years of service within the University or who, if they previously have had a sabbatical leave, have completed at least six consecutive years of service within the University from the date of return from their last sabbatical leave, shall be eligible for a sabbatical leave. In computing consecutive years of service for the purpose of this Section 3, periods of vacation leave and periods of sick leave with salary shall be included; periods of leaves of absence other than vacation leave and sick leave with salary, and periods of part-time service, shall not be included, but shall not be deemed an interruption of otherwise consecutive service.

§ 4. *Terms and Conditions.* Sabbatical leaves may be granted for periods of one year at rates not to exceed one-half salary or for periods of one-half year at rates not to exceed full salary. Members of the academic staff on sabbatical leave may, with the prior approval of the President, accept fellowships, grants-in-aid or earned income to assist in accomplishing the purposes of their leaves. In such cases, the President may adjust the sabbatical leave salaries to reflect such income, either prior to or during the periods of such leave.

§ 5. *Applications.* Applications for sabbatical leaves shall be submitted to the chief administrative officer of the college concerned as far in advance as possible of the requested effective date of the leave, but in no event later than six months in advance unless such requirement is waived by the President. Each application shall include a statement outlining the program to be followed while on leave, indicating any prospective supplementary income, stating that the applicant intends to continue as a member of the academic staff upon his return and stating that upon his return the applicant will submit to the chief administrative officer of the college a report of his accomplishments while on sabbatical leave.

§ 6. *Approval.* If the chief administrative officer of the college approves the application, he shall forward it, together with his recommendations, to the President. The President may grant such sabbatical leaves as he deems appropriate and shall report to the Board all sabbatical leaves which he has granted.

[fol. 62]

§ 7. Substitutes. During the absence on sabbatical leave of members of the academic staff of a college, the chief administrative officer of such college shall make appropriate arrangements for carrying on the activities of such college with due regard to the reasonable work load of the other members of the academic staff, and such persons on sabbatical leave shall not be required or permitted to contribute toward the salary of substitutes during their absence.

Title E. Other Leaves

§ 1. Approval. The chief administrative officer of each college may grant members of the academic staff of such college, other than persons having temporary appointments, other leaves of absence without salary, for not to exceed a total of twelve months. The President, after receiving the recommendation of the chief administrative officer of such college, may grant such persons leaves of absence, without salary, for any additional period.

§ 2. Application. Applications for leaves of absence, without salary, shall be made to the chief administrative officer of the college concerned. Each such application shall include a statement of the purpose for which the leave is requested, its anticipated duration and its value to the applicant or the University. Leaves of absence granted shall be reported by the chief administrative officer to the President.

Title F. Limitations

§ 1. Term Appointments. Notwithstanding anything contained in this Article XIII, no leaves of absence shall be deemed to extend the terms of members of the academic staff having term appointments, and all leaves of absence shall, in any event, terminate upon the expiration of such terms.

Title G. College Administrative Officers

§ 1. Leaves of Absence. College administrative officers other than the chief administrative officer whose positions are in the unclassified service shall be entitled to the same leaves of absence provided in this article for members of the academic staff under the same terms and conditions and subject to the same limitations, except that for the purpose of determining their eligibility for sabbatical leaves such college administrative officers shall be deemed to have continuing appointments.

Article XIV TERMINATIONS OF SERVICE

Title A. Termination at Will

§ 1. *Temporary Appointments.* The services of members of the academic staff having temporary appointments may be terminated at will by the chief administrative officer of the college concerned, notwithstanding any other provision of this Article XIV. There shall be no right of appeal from such a termination.

Title B. Automatic Termination

§ 1. *Term Appointments.* The services of members of the academic staff having term appointments shall cease automatically at the end of their specified terms. There shall be no right of appeal from a non-renewal of a term appointment.

Title C. Termination for Age or for Physical or Mental Incapacity

§ 1. *Retirement.* The services of members of the academic staff may be terminated at any time for age or for physical or mental incapacity in accordance with Article XV, Title D, of these Policies.

Title D. Termination for Cause

§ 1. *Grounds.* The services of members of the academic staff may be terminated at any time for cause, which shall consist of inadequate performance of duties, misconduct or violation of these Policies, after such notice and opportunity to be heard as are provided for by this Title D.

§ 2. *Notice.* When the chief administrative officer of a college has information or receives a complaint against a member of the academic staff of such college containing allegations which, if true, might serve as grounds for dismissal for cause, and he deems such information or complaint to be substantial, he shall discuss it with the person concerned and shall make such further investigation as he deems appropriate. If he believes that charges should be brought against such person, he shall forward such information to the President together with his recommendation. If the President determines, after making such further investigation as he deems appropriate, that further action

[fol. 64]

is warranted, he shall cause to be served upon the person concerned a written statement of the charges against him.

§ 3. *Request for Hearing.* Final action shall not be taken on such charges until after the expiration of 30 days from the date of service of such notice upon the person charged, during which time he may make a written request to the President for a hearing before the University's Standing Committee on Terminations. If he makes such a request he shall be given a hearing as hereinafter provided. If the person charged does not request a hearing the President may direct that such a hearing be held. When a hearing has been requested or directed, final action on the charges shall not be taken until the hearing has been held and the matter presented to the Board of Trustees as hereinafter provided.

§ 4. *Conduct of Hearing.* No member of the Committee on Terminations shall serve in a case involving a member of the same academic staff of a college of which he is a member. The President or his designee, or both, may be present at the Committee hearing as an auditor, but shall not be present at or participate in the deliberations or decisions of the Committee. At such hearing, the faculty member charged shall be entitled to be present, to be represented by a person of his own choice, to present witnesses in his own behalf and to confront and question witnesses against him. All testimony at such hearing shall be under oath. A stenographic record shall be taken of each such hearing.

§ 5. *Failure to Testify.* If the person charged refuses to answer any question at the hearing pertinent to the charges against him, the Committee may regard such refusal as sufficient to warrant a recommendation that his services be terminated.

§ 6. *Findings and Recommendation.* Upon the completion of its hearing, the Committee shall make a written statement of its findings with respect to the charges and shall also make a written recommendation, and shall thereupon submit to the President the stenographic transcript of the proceedings, the statement of its findings and its recommendation.

§ 7. *Review by President.* Upon receipt of the stenographic transcript of the proceedings and the Committee's statement of findings and recommendation the President shall review and transmit them to the Board of Trustees along with his own recommendation. Where

[fol. 65]

no hearing was requested or held the President shall review the charges and make such investigation of the matter as he deems appropriate and transmit to the Board of Trustees a report of the matter together with his recommendation.

§ 8. *Action by Board.* Upon receipt of the recommendation of the President and the accompanying material as hereinbefore provided, the Board of Trustees shall review the matter and take such action, if any, as it deems advisable. There shall be no right of appeal from such action of the Board of Trustees.

§ 9. *Failure to Attend Hearing.* If the person charged fails to request or attend a hearing of the Committee, the Board of Trustees may, after receiving the recommendation of the President, take such action, if any, as it deems advisable. There shall be no right of appeal from such action of the Board of Trustees.

§ 10. *Suspension.* If the President deems it to be for the best interest of the University, a person upon whom charges have been served may be suspended by the President, with or without salary, pending final action upon such charges by the Board of Trustees. If a person against whom charges have been served is suspended without salary and subsequently is reinstated to his position by action of the Board of Trustees and no disciplinary action against him is taken by the Board of Trustees, he shall be paid the salary which he otherwise would have received during the period of such suspension.

Title E. Termination for Retrenchment

§ 1. *Budget or Program Curtailment.* The services of any members of the academic staff may be terminated in the event of financial or program retrenchment. If the President anticipates that such retrenchment may be necessary, he shall seek the advice of the Faculty Senate concerning the policy to be followed in the reduction of staff.

Article XV RETIREMENT

Title A. Membership in Retirement Systems

§ 1. *Requirement.* Members of the academic staff, other than persons having temporary appointments, shall, if eligible, become

[fol. 66]

members of either the New York State Employees Retirement System or the New York State Teachers Retirement System, or shall elect the Optional Retirement Program.

Title B. Mandatory Retirement

§ 1. *Age.* Members of the academic staff shall be retired and their services terminated on the thirty-first day of August next succeeding their reaching age seventy. Administrative and executive officers of the University and of the institutions therein, if their services have not otherwise terminated prior thereto, shall be retired and their services terminated on the thirty-first day of August next succeeding their reaching age sixty-five, except that the service of any such officer may be continued on a year to year basis between age sixty-five and age seventy upon the recommendation of the President of the University and with the approval of the Board of Trustees.

Title C. Voluntary Retirement

§ 1. *Notice.* Members of the academic staff who wish to retire at an age earlier than seventy under the provisions of the retirement systems of which they are members shall, prior to applying for such retirement, notify and consult with the chief administrative officer of the college concerned with respect to the effective date of such retirement.

Title D. Retirement for Physical or Mental Incapacity

§ 1. *Policy.* Members of the academic staff may be retired and their services terminated by the Board of Trustees, after receipt of the recommendation of the President and upon medical advice, for mental or physical incapacity which prevents such persons from adequately performing their duties.

Title E. Emeritus Status

§ 1. *Eligibility.* Members of the academic staff, other than those having temporary appointments, who retire because of age in accordance with the provisions of Title B or C of this Article XV or who are retired because of incapacity in accordance with the provisions of

[fol. 67]

Title D of this Article XV, may be granted emeritus their academic rank as of the time of their retirement, by action of the Board of Trustees.

§ 2. *Privileges.* Academic rank emeritus shall be an honorary designation only, and shall not carry with it any other rights or privileges.

[fol. 68]

[68 fol.]

STATE UNIVERSITY OF NEW YORK

Central Administrative Office: Albany 1, N. Y.

University Centers

State University at Albany
 State University at Buffalo
 State University at Stony Brook

Medical Centers

Downstate Medical Center at Brooklyn (New York City)
 Upstate Medical Center at Syracuse

Graduate School

Graduate School of Public Affairs at Albany

Colleges

College at Brockport	College at New Paltz
College at Buffalo	College at Oneonta
College at Cortland	College at Oswego
College at Fredonia	College at Plattsburgh
College at Geneseo	College at Potsdam
Harpur College at Binghamton	
College of Forestry at Syracuse University	
Maritime College at Fort Schuyler (Bronx)	
College of Ceramics at Alfred University	
College of Agriculture at Cornell University	
College of Home Economics at Cornell University	
School of Industrial and Labor Relations at Cornell University	
Veterinary College at Cornell University	

Two-Year Colleges

Agricultural and Technical Institutes at:	Alfred	Delhi
	Canton	Farmingdale
	Cobleskill	Morrisville

Community Colleges

(Locally-sponsored two-year colleges under the program of State University)

Adirondack Community College at Hudson Falls
 Auburn Community College at Auburn
 Borough of Manhattan Community College at New York City
 Bronx Community College at New York City
 Broome Technical Community College at Binghamton
 Corning Community College at Corning
 Dutchess Community College at Poughkeepsie
 Erie County Technical Institute at Buffalo
 Fashion Institute of Technology at New York City
 Fulton-Montgomery Community College at Johnstown
 Hudson Valley Community College at Troy
 Jamestown Community College at Jamestown
 Jefferson Community College at Watertown
 Kingsborough Community College at Brooklyn
 Mohawk Valley Community College at Utica
 Monroe Community College at Rochester
 Nassau Community College at Garden City
 New York City Community College of Applied Arts
 and Sciences at Brooklyn
 Niagara County Community College at Niagara Falls
 Onondaga Community College at Syracuse
 Orange County Community College at Middletown
 Queensborough Community College at New York City
 Rockland Community College at Suffern
 Staten Island Community College at New York City
 Suffolk County Community College at Selden
 Sullivan County Community College at South Fallsburg
 Ulster County Community College at Kingston
 Westchester Community College at Valhalla

delayed because of forwarding my new address 34 — 1 St.

*STATE UNIVERSITY OF NEW YORK
ALBANY N.Y.*

Office of the President

January 28, 1965

Mr. Ralph Maud
107 Lexington Avenue
Buffalo 2, New York

Dear Mr. Maud:

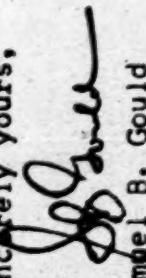
I am pleased to inform you that the Board of Trustees of State University of New York has, upon recommendation, granted you an appointment as Associate Professor of English, with continuing status at State University of New York at Buffalo effective January 1, 1965 at an annual salary of \$9,596, subject to such changes as may be authorized or required by law during your incumbency.

It must be understood that this is in pursuance of my direction that you should not be prejudiced as to normal employment rights and advancement in due course pending the determination of questions which have arisen because of your refusal to comply with the University's requirements respecting its responsibilities under Section 3022 of the Education Law. Your status will be subject to the disposition of any charges which may be made against you for such refusal as affected by the ultimate outcome of the pending litigation to which you are a party.

This appointment is offered to you under the terms of the Policies of the Board of Trustees, a copy of which is available in the college library.

If you wish to accept the appointment, please sign the acceptance endorsed upon the enclosed copy of this letter and return it at your earliest convenience to President Clifford C. Furnas at the State University of New York at Buffalo.

Sincerely yours,


Samuel B. Gould
President

I hereby accept the foregoing appointment.

11 February 1965
(Date)

Ralph N. Maud
(Signature)

Italicized material handwritten note.

[fol. 70]

EXHIBIT "5A" TO STIPULATION OF FACT

November 4, 1964

Dr. Clifford C. Furnas
President
State University of New
York at Buffalo
3435 Main Street
Buffalo, New York 14214

Dear Cliff:

Since assuming office on September 1, I have endeavored to inform myself fully concerning difficulties which have arisen at Buffalo with respect to the refusal by some of your faculty members to submit the certificate required by the Policies of the State University Trustees for the purpose of carrying out their duties under State laws prohibiting the employment of those who advocate the violent overthrow of government. I have now had opportunity to complete a review of the pertinent papers and to discuss the entire matter with those who have been concerned with it pending the appointment of a President.

First let me observe that there appears to have been patient effort both on your part and on the part of the central staff here to deal with the objections raised by the faculty members on a reasoned and responsive basis. I find extensive correspondence seeking to explain the statutory provisions and the limitations of the certificate to the purpose of obtaining information needed to furnish a reasonable basis for compliance on the part of the University. In the case of three faculty members who have term appointments with varying periods still to run, there now appears to be a final determination that they will not comply with the University's requirements. These three, with two others, instituted an action in Federal court seek-

ing a determination of the unconstitutionality of the New York statutes which lie at the heart of the matter. The action was commenced prior to my taking office but resulted shortly thereafter in a decision dismissing the complaint which is now on appeal to the United States Court [fol. 71] of Appeals. The two plaintiffs other than the term appointees are no longer employed by State University. One of them, Keyishian, had a term faculty appointment which has expired. He had been properly informed prior to the expiration of his term that he would not be given a new appointment and I cannot find that he has any employment status or rights. The other, Starbuck, was employed in a position in the classified civil service under a temporary certification by the Civil Service Department, which gave him no tenure. When that certification expired, the University no longer had any authority to continue him in its employment.

The three remaining plaintiffs, as you know, are George Hochfield, Ralph Maud and Newton Garver, each of whom is now teaching under the term appointment which he holds. They should not, and will not, be prejudiced because they have invoked the orderly processes of the law to obtain a determination of the validity of the basic statutory provisions. This is so even though those provisions have heretofore been sustained by the Supreme Court of the United States and the administrative officers of State University cannot conscientiously do less than follow the procedures prescribed by its governing board for compliance therewith. The Federal court has denied any temporary injunctive relief to the plaintiffs and the University is, therefore, not stayed from carrying out its duty to comply with State law.

Members of the academic staff holding term appointments may not be removed during such terms except upon notice of stated charges and an opportunity to be heard as provided in the Board's Policies. In the cases of Maud and

Hochfield you have had the discussions with them required by the Board's Policies when a matter which might be the subject of charges arises. They have confirmed their refusal to comply with the University's directions to furnish the so-called Feinberg certificate and you have recommended to the Acting Chief Administrative Officer prior to my taking up the duties of President, that charges be preferred against them for insubordination based thereon, but without suspension from their positions pending the determination of such charges. I can find no basis upon which I might excuse or waive their compliance with the generally applicable requirements of the University, and have, therefore, directed the University Counsel to prepare an appropriate statement of the charges to be served upon them.

[fol. 72] Such charges will entitle them to a hearing, if demanded, before a standing committee of their academic colleagues which will accord them due process within the University's own procedures. In such a hearing the basis of the charges must be substantiated and they will have full opportunity to meet them.

There is an additional consideration in the case of Garver. His objection to furnishing the required certificate seems to have been primarily a matter of religious belief based upon the custom of the religious tradition to which he belongs, the Religious Society of Friends. Mr. Garver's sincerity has not been questioned although effort was made to convince him that the certificate as to the fact of Communist Party membership did not constitute the "vain protestation" he claimed it to be. Because Mr. Garver sought time to evaluate his religious convictions and to submit the matter to the Friends' yearly meeting, he was allowed to teach in summer school and because he was not given notification that his term appointment would not be renewed, he was given a new term appointment for 1964-65. The Yearly Meeting affirmed that the interpretation of the

Friends' tradition was "a matter of individual decision" and Mr. Garver has since made known his decision not to sign the prescribed certificate. The situation seems to be that you have not yet discussed this ultimate refusal with Garver as a matter which might be the subject of charges and which should be done under the Board's Policies if such charges are to be considered by you. Counsel advises me that he can find no constitutional right to exemption from the Board's requirement on the ground asserted and the Board has provided for none. If after discussion you should make the same recommendation with respect to Garver as in the cases of Maud and Hochfield, the same course outlined above will be followed.

In all of the cases the issue which arises is not misrepresentation. Neither is there any present accusation of advocacy of violent overthrow of government. The three have taken a position that the requirement may not validly be imposed upon them and have sought a judicial determination of that issue. For that reason I am in accord that there need be no suspension while the issue is being determined. For the same reason they should not be deprived of normal increases and advancements which they would otherwise receive. I have, therefore, given instruction that these matters be determined by the same considerations that would obtain had they not broached the issue of the Feinberg [fol. 73] certificate. Because of State constitutional and statutory restrictions, no retroactive adjustment can be made, but they will now be prospectively considered and determined as quickly as possible.

It must finally be observed that none of the foregoing is intended to condone the refusal of the faculty members to comply with the University's requirements. It recognizes only that the extent of any presently contemplated charge against them is refusal to comply with a direction which they, in presumed good faith, claim cannot validly be imposed upon them. They must remain fully responsible for

their conduct in the light of the ultimate disposition of that claim and the duty of the University as it then appears.

Sincerely yours,

Samuel B. Gould

President

JCC:HK

cc: Mr. Murray

Mr. Price

Mr. Orentlicher,

A.A.U.P.

[fol. 74]

EXHIBIT "6" TO STIPULATION OF FACT

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

Civil 10741

GEORGE E. STARBUCK,

Plaintiff,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, BOARD OF TRUSTEES OF THE STATE UNIVERSITY OF NEW YORK, STATE UNIVERSITY OF NEW YORK AT BUFFALO, CLIFFORD C. FURNAS,

Defendants.

Testimony taken in hearing before the Hon. JOHN O. HENDERSON, United States District Court Judge, Western District of New York, on March 30, 31, 1964, at Buffalo, New York.

APPEARANCES:

RICHARD LIPSITZ, Esq., 120 Delaware Ave., Buffalo, New York, Appearing on behalf of Plaintiff.

LOUIS J. LEFKOWITZ, Esq., State Atty. Gen., By **JOHN C. CRARY, Esq.,** and **MATTHEW TIFFANY, Esq.,** State Office Bldg., Buffalo, New York.

[fol. 75]

INDEX TO WITNESSES

Clifford C. Furnas

Harry W. Poppey

Thomas E. Connolly

Oscar A. Silverman

George E. Starbuck

INDEX TO EXHIBITS**Plaintiff's:**

P- 1 Document

P- 2 Form

P- 3 Document

P- 4 Booklet

P- 5 Letter

P- 6 Document

P- 7 Document

P- 8 Letter

P- 9 Letter

P-10 Document

P-11 Pamphlet

P-12 Document

P-13 Document

Defendant's:

D-1 Document

[fol. 76] The Court: I will hear your proof.

Mr. Lipsitz: Alright. Dr. Furnas, please.

Mr. Crary: May I enter an objection to the taking of any evidence on the grounds that the Court is without power to grant the injunction.

The Court: Yes.

CLIFFORD C. FURNAS, called as a witness on behalf of Plaintiff, and being first duly sworn, testified as follows:

Direct examination.

By Mr. Lipsitz:

Q. Dr. Furnas, even though we all know you, will you state your name and position for the record?

A. I am Clifford C. Furnas, President of the State University of New York at Buffalo.

Q. How long have you occupied that position?

A. Since September 1, 1954; of course, with the predecessor institution of University of Buffalo.

Q. You occupied the equivalent position when it was the University of Buffalo?

A. Correct.

Q. What was that known as?

A. The Chancellorship.

[fol. 77] Q. When did you become the President of what we have been referring to in the pleadings as SUNYAB?

A. It would be September 1, 1962, when it became the State University.

Q. Now, were all of the properties and facilities that had at that time been owned and been operated by the University of Buffalo taken over by the State?

A. Essentially.

Q. Did that include the library?

A. Yes, sir.

Q. Now, at that time, at the time of the acquisition, there was a library at the then University of Buffalo, was there not?

A. Correct.

Q. Was the library in one place or was it over a number of locations?

A. A number of locations.

Q. What is that called; is that a division of the University?

A. It is called a division of the University, the Division of Libraries.

Q. The Division of Libraries. And at the time of the taking over in September, 1962, was there a person in charge of the Division of Libraries?

A. There was a Director.

[fol. 78] Q. Who was that?

A. Dr. Oscar Silverman.

Q. Did he remain in that position until the present time?

A. Yes, sir.

Q. Never been discharged or repudiated in his position?

A. No.

Q. Prior to the takeover, did he occupy any equivalent position at the University of Buffalo?

A. He did.

Q. And before that time he was also Chairman of the English Department?

A. He held that dual position for a substantial period of time.

Q. Has he relinquished or been—

A. He relinquished his duties of Chairman of the Department of English.

Q. Now, is the Director a position which you can acquaint to some other position at the University?

A. It is equivalent to a Deanship.

Q. Deanship?

A. Yes.

Q. The Deanship is a position in charge of what?

A. In charge of the school, or in some cases called a college.

Q. For instance, the Dean of the Law School is a Deanship?

[fol. 79] A. That is correct.

Q. And of the Arts and Sciences College?

A. That is a Deanship. The Director in this case is equivalent to a Deanship.

Q. Do you have a position known as Lecturer at what was then the University of Buffalo and now known as SUNYAB?

A. That is correct.

Q. What is the position of Lecturer?

A. Those are usually part-time positions, more often than not, in the English Division or Millard Fillmore College.

Q. Do Lecturers lecture in the day schools?

A. There are in some of the schools a title of Lecturer.

Q. Are those persons, that is the Lecturers, on the academic staff of those schools in which they lecture?

A. Yes, they are members of the academic staff.

Q. Now, Doctor, did there come a time in the early part of this year when a decision was made to discharge George Starbuck; are you aware of that?

A. Yes, there was.

Q. Did you become involved in that decision?

A. I did.

Q. Did you make that decision?

A. I did not.

[fol. 80] Q. Are you the Chief Officer of the State University at Buffalo?

A. Presumably.

Q. You are hired to be the Chief Officer, are you not?

A. Correct.

Q. Somebody, however, is in authority over you somewhere along the line?

A. That is correct.

Q. Who or what position is that?

A. That is the position, the official usually known as the Acting President of the State University. Actually, I think the official title is Acting Administrative Officer of the State University.

Q. There was a time until recently when there was a President of the State University who then resigned and that position became vacant?

A. Yes.

Q. The person in that position, or the Acting President, is your superior?

A. That is correct.

Q. His name is Mr. J. Lawrence Murray?

A. That is right.

Q. Was it he who directed you to discharge Mr. Starbuck?

A. That is correct.

Q. Pursuant to those directions, you submitted or sent [fol. 81] a letter to Mr. Starbuck?

A. That is correct.

Mr. Lipsitz: Your Honor, that letter—I am trying to avoid being formal at this point—is the letter of January 28, 1964, attached to our moving papers.

The Court: I remember that.

Mr. Lipsitz: I assume there is no dispute over that?

Mr. Crary: No, none.

By Mr. Lipsitz:

Q. Now, in connection with the decision to discharge him, did Mr. Murray send you a letter?

A. He did.

Q. And that letter is a letter dated December 31, 1963, of which I show you a copy, is it not? First look at it, please? Is that a copy of the letter?

A. That is a copy of the letter.

Mr. Lipsitz: That is attached to our moving papers as Exhibit 7.

Br Mr. Lipsitz:

Q. Doctor, did you consult with anybody about whether or not Mr. Starbuck should have a hearing in connection with his prospective discharge?

[fol. 82] A. I did not.

Q. Accordingly, he was not given a hearing, is that correct?

A. That is correct.

Q. Now, you have a female employee by the name of Jeanette F. Martin?

A. Yes.

Q. What is her position?

A. Administrative Assistant.

Q. To whom?

A. Me.

Q. Do you have more than one Administrative Assistants or—

A. Not with that title.

Q. What are her duties?

A. She is in charge of the personnel in the office, with the exception of my personal secretary. There are five women who work for her. She is the one who keeps the—you might say the accounts of the office, the records of the office, and a number of miscellaneous duties. I think they are the principal duties, however.

Q. Does she sometimes communicate for you to the persons who represent the faculty in the Senate of the State University?

[fol. 83] A. Yes, she takes on a number of duties for me.

Q. Would you tell us what the Senate of the State University is, briefly?

A. I will ask you to clarify. If you mean the State University at Buffalo, I can tell you.

Q. Alright. There are two Senates?

A. There is a Senate of the State University system, as a whole.

Q. Then there is one at SUNYAB?

A. That is right.

Q. Does she perform duties—I will withdraw that. Are you involved in the Senate at SUNYAB?

A. I am chairman of it.

Q. You are the presiding officer?

A. Yes.

Q. It is in connection with that that she sometimes performs duties for you?

A. That is right.

Q. Now, just briefly describe what the Senate at SUNYAB consists of, what is its function?

A. The Senate at SUNYAB consists of 60 some members, ex-officio, or the deans of the instructional schools and of the divisions, and then there are—the remainder are elected by the faculty from the ranks of the faculty. Some of the members are specified from the particular [fol. 84] divisions or schools, and some elected at large from the faculty as a whole.

Q. Do they perform a governing kind of function?

A. They only advise.

Q. They advise in respect to policies of the faculty and the staff of the University?

A. That is right.

Q. Was this an institution which existed when it was the University of Buffalo?

A. That is correct.

Q. It has been carried over in substantially the same form after the merger?

A. That is correct.

Mr. Lipsitz: Would you mark this, please?

(Thereupon document referred to was marked Plaintiff's Exhibit P-1 for identification.)

By Mr. Lipsitz:

Q. I show you Exhibit P-1 marked for identification, consisting of five pages, and I ask you if you recognize that document?

A. I do not recall seeing this particular listing.

Q. Referring to the first page, which is in the form of [fol. 85] an unsigned memorandum to Dr. Thomas Connolly from Jeanette F. Martin, do you recollect seeing that before or knowing about it?

A. I haven't seen it or known about it.

Q. Is it Miss or Mrs. Martin?

A. She goes under the name of Miss Martin; she has a married name.

Q. Miss Martin did not discuss this with you?

A. She did not.

Q. Does she do these things within the authority of her job, however?

A. Yes, sir.

Mr. Lipsitz: I have no further questions of this witness.

Cross examination.

By Mr. Crary:

Q. Dr. Furnas, you participated in the negotiations which led up to the merger of the University of Buffalo into the State University of New York?

A. I did.

Q. Would you tell the Court whether or not there was discussion during the course of those negotiations as to the questions which would be presented by the University becoming a State institution with respect to compliance with the Civil Service Law?

[fol. 86] A. There was not. At the time that I was present at any of the discussions, those points were not touched upon.

Q. You knew when the University became a part of the State University of New York its employees would be subject to the Civil Service Law?

A. I did.

Q. You knew that in the legislation which was introduced in the Legislature and drafted to meet in part the problems of the merger there was a section which dealt with the compliance with the Civil Service Law?

A. I was not aware of that, no.

Mr. Crary: Your Honor, I am referring to Chapter 980 of the Laws of 1962 of the State of New York, which is a

matter of law, and if your Honor states that he is not familiar with it, I will put it before your Honor as a statutory enactment.

The Court: I will take judicial notice of the Civil Service Law of the State of New York.

Mr. Crary: This is a session law which dealt specially with the merger of the University.

[fol. 87] The Court: Do you have any objection if I have—receive that?

Mr. Lipsitz: Not at all. We are going to supply you with parts.

The Court: I will receive that.

By Mr. Crary:

Q. Doctor, did you have anything personally to do with the hiring of Mr. Starbuck?

A. No, I did not.

Q. Attached to the Plaintiff's moving papers is a copy of the letter of January 28, Exhibit 6 of the Plaintiff's moving papers; a letter of January 28th, purporting to be signed by you and addressed to Mr. George E. Starbuck, in which it is stated that you are enclosing a copy of the letter from J. Lawrence Murray; it deals with "your failure thus far satisfactorily to complete Block 7 of the application for nomination form as required by Civil Service." Do I understand from that—or may I ask you, did that indicate that you knew that the requirement to fill that question was one laid down by the Department of Civil Service?

A. At that time I knew it, yes.

[fol. 88] Mr. Crary: That is all, your Honor.

Mr. Lipsitz: No further questions.

The Court: That is all, Doctor.

You won't want to call Dr. Furnas, will you, again?

Mr. Lipsitz: Dr. Furnas, you are excused.

(Witness excused.)

HARRY W. POPPEY, called as a witness on behalf of the Plaintiff, and being first duly sworn, testified as follows:

Mr. Lipsitz: Before you are seated, did you bring a briefcase with you with many documents, and, if so, would you mind taking them up to the witness stand?

Direct examination.

By Mr. Lipsitz:

Q. What position do you occupy at SUNYAB?

A. I am Director of Personnel.

Q. How long have you held that position?

A. Three years in September.

Q. At this time then you were employed by the University of Buffalo before it was merged?

[fol. 89] A. A year prior to the merger.

Q. Did you occupy an equivalent position?

A. Same title.

Q. Director of Personnel?

A. Yes, sir.

Q. Would you describe the duties of Director of Personnel?

A. Basically, it is to aid, advise, assist the faculty and department heads in obtaining qualified people through Civil Service, and in transmitting faculty appointments and promotions through Albany, and advising officers and staff of their fringe benefits available through the State and through the private corporation of the University.

Q. You said that you advised the obtaining of personnel through Civil Service. You never recommend or involve yourself with people not covered by Civil Service?

A. We have two kinds of categories; covered by Civil Service and the faculty not covered by Civil Service. We also have a corps, which are non-State employees in the research foundation.

Q. You do involve yourself in giving advice and consult personnel not covered by civil service?

A. That is right.

[fol. 90] Q. Now then, are you familiar with the position held by George Starbuck?

A. Yes.

Q. You became familiar through the performance of your duties as Director of Personnel?

A. I transmitted his application to Albany.

Q. In pursuance of your duty as Director of Personnel?

A. Yes.

Q. In your subpoena you were asked to bring documents with you. In compliance with that subpoena, did you bring what you thought were the documents?

A. I have everything, I think, that it covered.

Mr. Lipsitz: May I have an opportunity to look at those? This is the first chance I have had.

The Court: Yes. How voluminous are they?

Mr. Lipsitz: Eight or ten letters, some forms, and his retirement application.

The Court: We will take a short recess.

(Thereupon a recess was taken at 12:45 p.m.)

(Proceedings resumed pursuant to recess, commencing at 1:00 p.m.)

[fol. 91] By Mr. Lipsitz:

Q. Mr. Poppey, before the recess I asked you to give me a folder, which you did. I ask you for that folder of documents pertaining to Mr. Starbuck. Thank you. Would you mark this for identification?

(Thereupon document referred to was marked Plaintiff's Exhibit P-2 for identification.)

By Mr. Lipsitz:

Q. Mr. Poppey, I show you what has been marked P-2 for identification, and I ask you if that is one of the documents from your file?

A. Yes.

Q. Now, before I ask you questions about it in detail, tell me what this form is?

A. It is an internal appointment or change of status form at the University.

Q. Is this a form created by the University?

A. It was the same form in use as a private university, we have been using it as a carry-over.

Q. In connection with these forms, are they in multiple copies?

A. Six part carbon sets.

[fol. 92] Q. Referred to as the Pentagon?

A. Yes.

Q. Because of the six parts?

A. I don't know.

Q. Now then, is P-2, the form, the Pentagon form used in the original employment—I'm not going to characterize it beyond that—of Mr. Starbuck at the University?

A. Yes.

Mr. Lipsitz: I offer it in evidence.

The Court: Any objection?

Mr. Crary: May I ask a question in connection with the exhibit?

The Court: Yes.

Preliminary examination.

By Mr. Crary:

Q. You say this is an internal form?

A. Yes.

Q. This is used solely within the State University of New York at Buffalo?

A. Yes.

Q. This does not go to the Department of Civil Service?

A. No, this stays in the Department, in the Personnel Office, at the Dean's Office, and the Payroll Office.

Mr. Crary: I have no objection to it, for what it is [fol. 93] worth.

The Court: Received.

(Thereupon Plaintiff's Exhibit P-2, previously marked for identification, was received and marked in evidence.)

By Mr. Lipsitz:

Q. Do you recall a time before this document was completed that Dr. Silverman called you about hiring Mr. Starbuck?

A. Yes.

Q. Do you recall when it was or approximately when it was?

A. Within a week before he came. I believe somewhere in late September.

Q. And did he speak to you by telephone, Dr. Silverman?

A. It was either Dr. Silverman or Mr. Ernst, either one of them.

Q. Mr. Ernst is Dr. Silverman's assistant as Director of the Library?

A. That is right.

Q. In any event, one of them spoke with you?

A. That is right.

Q. And it is a fact that whoever spoke to you told you [fol. 94] that he proposed hiring Mr. Starbuck?

A. That is right.

Q. And asked you if you would clear it with Mr. Randall?

A. That is right.

Q. Who is Harvey Randall?

A. Harvey Randall is the Assistant Director of Personnel at the State University.

Q. He is employed at the State University offices in Albany?

A. That is correct.

Q. And did you—I am not asking for the conversation—did you subsequently take this up with Mr. Randall?

A. Over the telephone, yes.

Q. Did he advise you that the employment would be approved?

A. That is correct.

Q. Did you relay that information to Dr. Silverman or Mr. Ernst?

A. Yes.

Q. Following that then, in the number of copies that it was made out in, you received P-2, is that correct?

A. We received the whole set of that.

Q. One of which was the document known and received in evidence as P-2?

[fol. 95] A. That is right.

Q. Now, when you received this, Mr. Poppey, which part of it was filled out?

A. Everything that is typed in, except Dr. Silverman's handwriting on it and mine.

Q. Everything typed in was on it when you received it?

A. Yes.

Q. Except, I assume, for Dr. Silverman's own signature?

A. That is right.

Q. Now, there is some handwritten matters opposite Dr. Silverman's signature, which appears to read, "Apprvd. by Albany, Sept. 1963"?

A. That is right.

Q. Who placed that on there?

A. I did.

Q. Underneath Dr. Silverman's signature, opposite the printed legend, "Approved by", there appears some initials; whose initials are those?

A. My initials and Dr. Anderson's.

Q. Who is Dr. Anderson?

A. Vice President of the University.

Q. What is his particular duty?

A. Vice President for academic affairs, responsible for all appointments that come.

Q. Would you repeat that?

[fol. 96] A. He is Vice President for academic affairs, educational affairs.

Q. At the—

A. SUNYAB, yes.

Q. Did he occupy an equivalent position before the merger?

A. Yes.

Q. He continued to occupy it after that?

A. That is correct.

Q. Does he involve himself in the appointments and recruitment of personnel for SUNYAB?

A. In most cases, yes.

Q. When you say "in most cases;" what kind does he not?

A. The clerical level would be utilized from a list. Dr. Anderson—all Pentagons used to go through Dr. Anderson's office completely.

Q. Now those go through, except for clerical and char-ladies, janitors?

A. No, those that pertain to civil service and certain other areas are directed directly to my office. I sign for Dr. Anderson, though.

Q. But you sign for Dr. Anderson then, in terms—

A. Out of custom.

Q. Alright. Now then, after you received this form, or these forms, was something done to allow Mr. Starbuck [fol. 97] to begin to perform services?

A. He was called over to the office, I believe, by one of the girls to fill out the employment form. I think he filled them out October 2nd.

Q. And then he started to perform services?

A. I think he started October 10th.

Q. What was done to get him on the payroll?

A. That form was initialed up to the payroll office, along with his employment form, where they created the State Employment Forms.

Q. That form, meaning P-2, was sent in, one of its copies was sent to your payroll office?

A. That is right.

Q. That payroll office is located at SUNYAB?

A. That was the internal payroll office at SUNYAB.

Q. Do they do anything to send it to State for approval?

A. Transmit that information on to the State form, goes into Albany for approval.

Q. Is there a form in here which is the State form that went to Albany for approval?

A. PR 75, this one.

Q. Before we go into that; did you review this P-2 before you sent it on?

A. I signed it, yes.

Q. Did you read it?

[fol. 98] A. Yes.

Q. Did you take exception to anything on it?

A. Well, I just made the acquisition. I changed the acquisition to read N.S. after the title.

Q. What does N.S. mean?

A. Non-statutory, not in a grade.

Q. When you say it is not in a grade, you mean it hasn't been classified in any position by the Civil Service Commission?

A. No, it is just—N.S. means that it just hasn't been placed in any allocation grade. It can be either U grade or SG grade.

The Court: I don't get that, what is that about?

Mr. Lipsitz: I don't get it either.

The Witness: Let me give an example. A stenographer can be SG-4—

The Court: What does SG mean?

The Witness: It is a symbol meaning it is—SG stands for salary grade, and SG-4 means that is the salary they pay a stenographer, starting at a certain pay level, SG-4. The U grade has a comparable position, having U and another number after it. That might be used for assistant professor. The terminology N.S. means solely that it's [fol. 99] not against either grade. When you hire a part-time typist she would be N.S. If we hired a part-time lecturer, he would be N.S., meaning not statutory, no grade.

The Court: What is this, N.S.?

By Mr. Lipsitz:

Q. You placed the N.S. on here?

A. That is right.

Q. There is some other language on here which I don't understand, "P plus S"?

A. This is my notation to the payroll office, what to do with the position. This is to pay for temporary service pending the change in the budget segregation.

Q. What does that mean?

A. The budget segregation is the paying document issued by the Division of the Budget, sent to the Department of Audit and Control so they can pay employees from that portion of it. The position that they wanted to appoint Mr. Starbuck did not fit against this budget segregation. We are paying from a lump sum of temporary service money until the budget segregation could be changed.

[fol. 100] Q. It didn't fit because he was being paid at a different rate than the person whose job—previously had held that job?

A. I think in this case—I'm not sure—I don't think that line item existed on the State segregation at all.

Mr. Lipsitz: Would you mark this?

(Thereupon document referred to was marked Plaintiff's Exhibit P-3 for identification.)

The Court: Do I understand you have got a certain amount of money set up on a regular budget, then you get a lump sum to play with for temporary employees?

The Witness: No. In many cases, since the merger many of our employees didn't fit the normal State pattern of title and grade, so what we had to do, any time we hired anybody that didn't fit a normal pattern, or was a definite replacement at the same title and grade, we would have to [fol. 101] pay through temporary service until we could get the budget changed. We were utilizing a lump sum of money as temporary service for, in fact, most of the appointments that we have made at the University.

The Court: How did that come about, that title change; was that established through some regular routine, or how did it come about that a person who was being paid out of the lump sum finally would be transferred over to the regular budget?

The Witness: It is all the same amount of money, except some of it is lined out. And the best example, in the line item, either we can hire a person at that title and salary, or if we do not find a person we can employ at that salary, we must employ them through means of temporary service, getting them on the payroll, and getting the segregation in the budget changed the next time around.

The Court: You mean the next year?

[fol. 102] The Witness: The next quarter, every three months.

By Mr. Lipsitz:

Q. Was there a change in the next quarter?

A. I don't know. He had been moved to a line by this time. This is September—probably December or February.

Q. When he was moved to a line, you mean on the budget for the Division of Libraries there was a specific line allocated for this position and Mr. Starbuck was moved into it?

A. No. This again—the budget that you were referring to before is the internal budget where they ask for money in that portion. Again, when we ask the State for the money, we have to translate our internal budget into different terms. Even though Dr. Silverman had a sufficient amount of money against his line in his internal budget, that line didn't exist in the eyes of the State, it was not segregated out.

Q. That line does not exist for anybody in the eyes of the State, it is only in your internal budget, is that correct?

A. On the internal budget. Then it exists when we change the segregation.

[fol. 103] Q. We will come to the budget later. I show you P-3 marked for identification, entitled Payroll and Personnel Transaction Form PR 75, and I ask you if you can identify that?

A. That is the one prepared by Mr. Starbuck on the payroll.

Q. That is prepared by what personnel, where?

A. In our payroll office.

Q. At SUNYAB?

A. Yes.

Q. It is in turn, or one of the copies of it, is forwarded to Albany?

A. The whole package is forwarded to Albany.

Q. Do you get one back?

A. This is the one we get back.

Q. Now, this is filled out, you say, in your payroll office in Buffalo?

A. That is right.

Q. Is it reviewed by anybody?

A. It is reviewed by the Department of Civil Service, in the Department of Audit and Control.

Q. Is it reviewed by anybody at Buffalo before it goes there?

A. Only the payroll office.

Q. If they did their job they would have reviewed this [fol. 104] before it went out?

A. That is correct.

Q. What is this N.C. on here refer to at line 11?

A. There it refers to non-competitive. It's an error, that's why the line is through it by somebody in the Civil Service—

Q. Who is it an error by, you or somebody else?

A. If I do—

Q. Who placed it on there?

A. The payroll office.

Q. Who placed the line through it?

A. I would assume someone in the Civil Service, there is where it goes to first.

Q. You don't know who placed the line through it?

A. No.

Q. Do you have a document which consists of all the positions that are available to employ persons at SUNYAB?

A. Yes.

Q. From Dr. Furnas' job on down to the lowest janitor?

A. That is correct.

Q. And do those jobs—withdraw that. Is the job of an assistant in acquisitions in that document any place?

A. The internal roster of the—I'm sorry—I thought [fol. 105] you said do we have a listing of all the jobs at SUNYAB?

Q. Yes.

A. Yes.

Q. You say yes, and that is from Dr. Furnas on down to the janitor?

A. That is correct.

Q. And is the job of assistant in acquisitions on that?

A. Yes.

Q. Are those jobs placed in any categories on that collection of job titles?

A. Those that were there—the people are placed in the—

Q. I'm not asking about the people.

A. The positions are not placed in any category.

Q. In other words, the position of—do you have the position of stenographer?

A. Yes.

Q. Do you fill that position from time to time?

A. Yes.

Q. Is that not categorized?

A. That one is.

Q. As what?

A. As stenographer, competitive class.

Q. Is that the only one?

[fol. 106] A. There are a number of others they have classified.

Q. How many positions on that list that you maintain at SUNYAB, not persons, but positions?

A. Different positions? Roughly, I would say literally between five hundred and one thousand different positions.

Q. What percentage of them are classified on that document as to being whether or not they are competitive?

A. Whether or not they are competitive?

Q. Yes.

A. As far as competitive, all except the faculty are competitive.

Q. Is an assistant in acquisitions listed as a competitive job?

A. It is competitive because it is not in the classified.

Q. Is it listed as a competitive job as a stenographer is listed?

A. No. Again, I have to clarify. Because we don't have an asterisk over the job saying this job is competitive, this is not competitive. We have a listing of positions and we have a status and a classification of the individuals in those jobs.

Q. In other words, the fact there is an absence of an asterisk leads you to conclude that therefore an assistant [fol. 107] in acquisitions is a competitive job?

A. No, it's a—the assistant in acquisitions hasn't been placed on the classified service.

Q. What has it been placed in?

A. By not being placed—it hasn't been placed yet.

Q. It hasn't been placed yet, and by not having been placed yet it belongs someplace?

A. That is what the law says.

Q. That is what you are saying?

A. All positions not in the unclassified service or listed in the—all positions that are not in the classified service or that haven't been listed out by the Department of Civil Service as being in the exempt or non-competitive class are automatically in the competitive class.

Q. What examination has been created for this job of assistant in acquisitions?

A. So far, none.

Q. Aren't examinations created for competitive jobs whether written or verbal?

A. Even the application can be an examination process in and of itself.

Q. There has been no examination for this job?

A. That is correct.

Q. Now, I call your attention to Line 14 on P-3—
[fol. 108] A. That is right.

Q. Where there is an X under the legend, duration in the box marked permanent?

A. That is correct.

Q. That hasn't been crossed off?

A. That is right.

Mr. Crary: If the Court please, counsel is examining on a document which he has marked for identification. He is now examining from it, it is not offered in evidence.

The Court: Do you want to offer it?

Mr. Lipsitz: I intend to—

The Court: Offer it now.

Mr. Crary: I object to the document he is offering on the grounds that it is incomplete. When this was sent to civil service, as Mr. Poppey testified, there was a back page on the form which was sent to civil service. That is this famous PR 75 form. I would suggest if it were offered we offer the whole document.

The Court: I assume you have in mind that there is another form which has the Question 7 which we are here [fol. 109] about?

Mr. Lipsitz: There is no doubt about there being another form. I am not offering that. I am offering this from this witness' records.

The Court: Is that all you have; don't you have the second sheet to that form?

The Witness: The back sheet of the form, the application on the back of the original form, that goes to the Department of Civil Service and stays there.

The Court: This is something from your regular files?

The Witness: A carbon copy.

The Court: Used in the course of the University's business?

The Witness: That is a carbon copy of—

Mr. Crary: I'll concede this is the form which was returned to the University of Buffalo from Civil Service, but I object to it being introduced as being the complete document which went to Civil Service.

The Court: Alright. Obviously it isn't offered as such. There is another page to it that goes forward from the [fol. 110] University.

Mr. Lipsitz: Apparently there is. I am only offering this page.

The Court: Overruled received. Mark it now.

(Thereupon Plaintiff's Exhibit P-3, previously marked for identification, was received and marked in evidence.)

By Mr. Lipsitz:

Q. You are familiar with the Civil Service Law, at least insofar as it has become necessary to perform your duties?

A. Yes.

Q. There are some notations here opposite Item 20 on this exhibit, P-3 in evidence, which are a little bit vague because of the lightness of the writing. Would you tell us, however, what the second line reads at Item 20 that is written in hand?

A. It is Rule 64-3, pending classification and compensation action.

Q. Who filled that in?

A. Department of Civil Service Transaction. The Department of Civil Service Transaction Unit.

[fol. 111] The Court: Excuse me, I heard compensation, what was the other?

The Witness: Classification and compensation.

By Mr. Lipsitz:

Q. In other words, it is pending 64-3 offered, meaning that is the authority pending classification and compensation action?

A. That is right.

Q. That was presumably filled in here by somebody in Albany after you sent the forms in and before it was returned?

A. That is correct.

Q. Is Dr. Simmons a person working in the Civil Service?

A. Yes.

Q. In Albany?

A. Yes.

The Court: What is 64-3?

The Witness: 64-3 is the section of law, the rule whereby we can appoint people temporarily pending certain kinds of action.

Mr. Lipsitz: I was coming to that, your Honor.

By Mr. Lipsitz:

[fol. 112] Q. In connection with 64-3, that is a provision of the Civil Service Law, isn't it?

A. That is correct.

Q. Did you use that in making appointments before?

A. Yes.

Q. Did you recommend that be the authority when this form went into Albany?

A. This is the authority that they have used for all temporary appointments—not all, most temporary appointments, pending some future—later, future action.

Q. Did you recommend the use of this as the authority?

A. No.

Q. In other words, you didn't have any discussion with Dr. Silverman or Mr. Ernst about whether or not this job would be "on an occasional basis"?

A. No.

Q. This job wasn't on an occasional basis?

A. No.

Q. And you didn't have any conversation with Mr. Ernst or Dr. Silverman as to whether or not "this job was on a full-time or regular part-time basis and a temporary position established to conduct a special study for a period not exceeding eighteen months"?

A. No.

[fol. 113] Q. It is not that kind of job, is it?

A. No.

Q. How many assistants in acquisition are employed by the library at SUNYAB?

A. I don't know the exact number. There is about 30 to 40.

Q. For how many of them have there been competitive examinations?

A. One.

Q. If any?

A. One.

Q. One person?

A. One.

Q. What job was that?

A. Assistant Librarian, SG-14.

Q. When was that examination conducted?

A. I think it was held last fall.

Q. That is not Mr. Starbuck's position?

A. No.

Q. In other words, one out of the whole library department has taken a competitive examination, is that right?

A. Professional librarian, I think it's only one.

Q. How many are on the staff?

A. I think there is thirty, thirty-five professional [fol. 114] librarians.

Q. Let me ask you this, Mr. Poppey; have any of the people who were employed in the library before the merger been asked to fill out the question and answer the form that is known as Question 7 on the rear side of PR 75?

A. Only if they have changed jobs.

Q. If they remain in the same job as employed on before the merger, they haven't been asked to answer that question?

A. Not yet.

Q. Do you have anything to do with the conducting of hearings for personnel who are to be discharged or dismissed or punished by the University?

A. If Dr. Furnas would be responsible for having the hearing, he might have me as a hearing officer.

Q. Are you aware of any procedures that have been developed for that purpose?

A. There is a formal—there are procedures developed for that purpose, yes.

Q. Are they in writing?

A. There is a manual, yes.

Q. The manual is the Board of Trustee's Rules of 1962?

A. That is for the faculty, there is that procedure, and there is a Civil Service grievance procedure.

[fol. 115] Q. Did you bring that?

A. I'm sorry, I did not.

Q. May I see P-2? You say there is a procedure in it for the faculty; that is located where?

A. The faculty procedure is in the Board of Trustee's booklet. I do not have a copy with me.

Mr. Lipsitz: I do. Will you mark this as Plaintiff's Exhibit P-4.

(Thereupon booklet referred to was marked Plaintiff's Exhibit P-4 for identification.)

By Mr. Lipsitz:

Q. I show you Plaintiff's Exhibit P-4, and ask you if that is the policy of the Board of Trustees, 1962, and contains a procedure for faculty hearings?

A. It does.

Q. That is the one you just referred to?

A. One of them.

Q. Is this the booklet, the form in which it has been published, the one I am explaining to you?

A. Yes.

Mr. Lipsitz: No objection?

Mr. Crary: No objection.

[fol. 116] Mr. Lipsitz: I offer it in evidence.

The Court: Received.

Mr. Lipsitz: Except for the name on the upper left-hand corner.

(Thereupon Plaintiff's Exhibit P-4, previously marked for identification, was received and marked in evidence.)

By Mr. Lipsitz:

Q. Mr. Poppey, do you know who—is it Mr. or Dr. Price?

A. I'm sorry, I didn't hear the name.

Q. David S. Price?

A. Yes.

Q. Who is he?

A. Dr. Price is Director of Personnel now, his title is Assistant Vice President.

Q. Is he, in the chain of command, the person whose duties would be over yours eventually, up at the top someplace?

A. He is Director of Personnel for all University personnel, and Assistant Vice President.

Q. So your work is in line with his overall supervision?

A. Yes.

[fol. 117] Mr. Lipsitz: Would you mark this as Plaintiff's Exhibit P-5?

(Thereupon letter referred to was marked Plaintiff's Exhibit P-5 for identification.)

By Mr. Lipsitz:

Q. I show you Plaintiff's Exhibit P-5 for identification, a copy of a letter dated January 24, 1964, addressed to

Faculty Senators and Chief Administrative Officers; Reference, Grievance Procedures, Academic Employees; signed David S. Price; and I ask if you can identify that document?

A. Yes, I have seen it.

Q. Do you have a copy of it in your own records?

A. I hope so. I think so, yes.

Q. You have previously received a copy of the same document?

A. Yes.

Mr. Lipsitz: I offer that in evidence.

Mr. Crary: If the Court please, I have not objected to the introduction of the policies of the Board of Trustees, because they are the policies of the Board of Trustees and [fol.118] they are applicable in accordance with their terms. Counsel is now introducing a letter from David S. Price, speaking of grievance procedures for academic employees, and to this I must object. There has been nothing established here which shows that the Plaintiff in this case is an academic employee with respect to his position.

The Court: Overruled; received.

(Thereupon Plaintiff's Exhibit P-5, previously marked for identification, was received and marked in evidence.)

The Court: I do not mean to imply be receiving it that it has or has not been established. Let me ask you, Mr. Poppey, up in the upper right-hand corner of this form, payroll personnel transaction form PR 75, there is a group marked one; what does that mean?

The Witness: One means those are all of the forms [fol.119] that have to go to the Department of Civil Service reporting original appointments or promotions.

The Court: Let me ask you this; down at the left hand corner there is a comment, apparently, by a man named D. Simmons, "Certificate valid until 4/1/64;" what does this mean; is this a pay certificate?

The Witness: No, the Department of Civil Service has given approval to this appointment only until April 1, 1964, Rule 64-3.

The Court: It means they will pay them until then?

The Witness: Yes.

The Court: It is a payroll and personnel transaction, that means they will pay them up until then?

The Witness: Until April 1st, that is correct.

The Court: At the time they make that approval, that second sheet, including Question 7, is forwarded, is that right?

The Witness: That is part of the original document when it goes there, that is correct.

The Court: Question 7, you know what I am talking [fol. 120] about, that is all forwarded?

The Witness: Yes.

The Court: This fellow Simmons, if it is a man, puts down the approval for pay purposes at least until April 1, 1964?

The Witness: That is correct.

The Court: They send back a copy to you, you are authorized to pay?

The Witness: That is the authorization to pay. A copy of that goes to the Department of Audit and Control who simultaneously with the form starts printing the check in Albany, and when we get a copy back, when it's an order as such, it is our certification to know when it is approved until. It notices the Comptroller's Office their approval to release the checks.

The Court: Alright.

Mr. Lipsitz: By the way, your Honor, I would call your attention to the fact that P-2 has in the upper right-hand corner, under the direction "Check One", the box checked for faculty, just in connection with this P-5 that I offered.

[fol. 121] (Thereupon Plaintiff's Exhibit P-5, previously marked for identification, was received and marked in evidence.)

By Mr. Lipsitz:

Q. Now, Mr. Poppey, in connection with the certification on there of 4/1/64, did Mr. Starbuck become informed by you or anybody at your direction, at any time, that he was to be paid only until 4/1/64?

A. No.

Q. Did you tell Dr. Silverman or Mr. Ernst about that?

A. No.

Q. You have been the man in charge of personnel since—withdraw that. Dr. Silverman was Director of Libraries?

A. Yes.

Q. Could you tell me how many people he recommended for employment who have been employed since he has been Director?

A. I think they have hired an additional—about thirteen or fourteen professional librarians in the past year or so, two years, I would say.

Q. Without regard to whether they are professional [fol. 122] librarians or not; could you tell me the number of people he has recommended for employment in the library since this became State?

A. Every one of them.

Q. Would it surprise you to know the employment jumped from forty-odd to ninety-odd?

A. That is the total library.

Q. I didn't confine my question to the professional library people. Are my figures accurate?

A. About ninety in the library.

Q. From around forty at the time of the merger?

A. Yes.

Q. And has he recommended the employment of all; has he or Mr. Ernst recommended the employment of all those people?

A. In the categories that are clerical, he makes the commitment on who is hired.

Q. As Director, he was the one who filled out the Pentagon form?

A. Yes.

Q. Is the form he used for George Starbuck, which is received in evidence as P-2, a form similar to the others that he used for the employment of other people?

A. The same.

[fol. 123] Q. Has any one of his appointments ever been repudiated?

A. Not to my knowledge.

Q. Have any of the people ever been removed from the payroll?

A. No.

Q. Have you ever had any occasion to speak to Dr. Silverman or talk to him about a lack of authority in hiring people, or the limit of his authority?

A. Dr. Silverman has received a faculty appointment procedure memorandum. We have sent out memos on how to hire people.

Q. Has he been hiring according to those memos?

A. Yes.

Q. You never had occasion to call his attention to any deviation on his part on the hiring procedures at SUNYAB?

A. Not to my knowledge.

Q. You would be the fellow who would know about it?

A. Yes.

Q. Now, are there some positions at SUNYAB paid on a ten-month basis, some on a twelve-month basis?

A. Yes.

Q. Mr. Starbuck was to be paid on a twelve-month basis?

A. He was being paid on an annual salary.

Q. Meaning what?

[fol. 124] A. Every two weeks.

Q. Every two weeks?

A. Every two weeks.

Q. Throughout the year of his—

A. That is right.

Q. During the time of his employment period. The ten month people are paid monthly?

A. They are paid every two weeks over twenty-one bi-weekly pay periods, which is roughly ten months.

Q. Now, you heard Dr. Furnas testify, I believe, as to what a lecturer is?

A. That is correct.

Q. Did there come a time when Mr. Starbuck was offered employment as a lecturer?

A. Yes, we received a copy of his appointment as a lecturer.

Mr. Lipsitz: Would you mark this as Plaintiff's Exhibit P-6?

(Thereupon document referred to was marked Plaintiff's Exhibit P-6 for identification.)

Mr. Lipsitz: And would you mark this as P-7?

(Thereupon document referred to was marked Plaintiff's [fol. 125] Exhibit P-7 for identification.)

By Mr. Lipsitz:

Q. I show you Plaintiff's Exhibit P-6 marked for identification and P-7 marked for identification, and I ask you if you can identify those documents and, if so, by reference to the other ones already in the record?

A. Yes. These are from our records, yes.

Q. P-6 is a so-called Pentagon form?

A. That is correct.

Q. For his appointment to lecturer in English?

A. That is correct.

Q. And I note that the term of appointment is checked as part-time?

A. That is correct.

Q. And who is Ertell?

A. Dr. Ertell is the Assistant Vice President of Educational Affairs.

Q. He approved this?

A. That is correct.

Q. Your initials and notations do not appear here?

A. Just over to the left.

Q. H. P.!
[fol. 126] **A.** That is right.

Q. And P-7 is a similar document in content and form to the one previously offered in connection with Mr. Starbuck's employment as an assistant in acquisition; this one being as a lecturer in Millard Fillmore?

A. That was to pay him his additional salary as a lecturer over his normal salary.

Q. Judge Henderson asked you what this group number is; you have group two x'd.

A. Group two in this case, he already has an appointment before, it is not an original appointment. He already has an original appointment. I think group two in this case was to change his line item number, that is because we were moving from temporary service up to one of the existing line.

Q. Was this sent to Albany for approval?

A. That one, because it was paying for Millard Fillmore payment, which is our night service, we didn't need that kind of approval.

Q. Is Millard Fillmore not owned by the State of New York?

A. It doesn't need the approval by the Department of Civil Service where they are employed on the faculty. The faculty appointments do not go before the Department of [fol. 127] Civil Service.

Q. In other words, as a lecturer, he was on the faculty?

A. That is correct.

Q. Even though P-2, which was processed in the ordinary form, indicates he is on the faculty, that eventually did end up in the document going to Albany?

A. That is correct.

Mr. Lipsitz: I offer P-6 and P-7 in evidence.

Mr. Crary: I object to them because they deal with the position of lecturer, which is not in issue in this case at all.

The Court: Overruled; received.

(Thereupon Plaintiff's Exhibits P-6 and P-7, previously marked for identification, were received and marked in evidence.)

Mr. Lipsitz: Would you mark these as P-8 and P-9, these two documents?

(Thereupon documents referred to were marked Plaintiff's Exhibits P-8 and P-9 for identification.)

[fol. 128] The Court: Let me ask you, Mr. Poppey, did you see Mr. Starbuck's form, payroll and personnel transaction PR 75 at any time?

The Witness: No, not at its initiation.

The Court: Did you ever become acquainted with Question 7?

The Witness: Yes.

The Court: As far as he was concerned, in which he said, "I prefer not to answer, at least until the necessity and relevancy of this question is properly explained to me. G. S."?

The Witness: George was over to the office, we talked about it.

The Court: When did it come to your attention?

The Witness: Seriously, when it first happened, I thought it was a clerical error. Many times an employee will forget to fill out part of a form. One time when I was on the phone with Albany they mentioned they had a call from Civil Service, Mr. Starbuck didn't fill out the form. I think it was Harvey mentioned to me to send his form over. I had a [fol. 129] girl call the library to have him fill out another PR 75. It was at the time when George called back saying he was aware he did not sign that form and—

The Court: When was that?

The Witness: This was—

The Court: With reference to October, when he became worried?

The Witness: He originally filled out his PR 75 form on October 2nd, and I think George was in the office probably

some time late October or early November, that George was over to the office.

The Court: Now, Simmons approved this thing on December 6th, 1963; whoever Simmons is, do you know that?

The Witness: December? It is November.

The Court: November 6th.

The Witness: This is sent in to Albany. That was to pay him probably on November 6th at that time for the two pay periods. We have a closing deadline date internally within the office, as far as sending this into Albany. The payroll [fol.130] office has to cut off the payroll period before. They send these to Albany about three weeks before payday to get approval of the check.

The Court: What I am talking about; you knew about Starbuck's failure to sign Question 7 at a date earlier than Simmons made this approval?

The Witness: It was probably around the same time, because it was by a phone call, and that he did not approve it. It was probably right about the exact same time that the phone call came down.

The Court: Well, was there ever any action to stop his pay as a temporary employee, or whatever you think he was?

The Witness: On the part of the University?

The Court: Because of his failure to answer Question 7?

The Witness: No. Again, we originally thought it was a clerical error.

The Court: You knew pretty soon it wasn't, Starbuck told you it wasn't, didn't he? When did he tell you it wasn't [fol.131] an error?

The Witness: When he was in the office.

The Court: When was that?

The Witness: Probably early November.

The Court: Alright.

By Mr. Lipsitz:

Q. As a matter of fact, you spoke to him about that in the last week in October and then again in November?

A. I don't know the exact date. I talked to George a couple of times, yes.

Q. I now show you what has been marked for identification as P-8 and P-9; would you tell us if those came from your files on Mr. Starbuck?

A. They are.

Q. P-8, consisting of a letter from you to Dr. Price, requesting the appointment of Mr. Starbuck, is that correct?

A. That is correct.

Q. Dated September 24, 1963?

A. That is correct.

Q. And his answer contained in the letter of October 2, 1963, to you?

[fol. 132] A. That is correct.

Mr. Lipsitz: I offer these in evidence.

Mr. Crary: No objection.

(Thereupon Plaintiff's Exhibits P-8 and P-9, previously marked for identification, were received and marked in evidence.)

By Mr. Lipsitz:

Q. Mr. Poppey, regarding the contents of P-8, did you ever take this up—the contents of this letter up with Dr. Silverman or was this a letter you wrote pursuant to his telephone request for authority?

A. I think this was from Dr. Silverman, his kind of information that I just included in my body of my letter.

Q. In other words, P-8 was the letter that you wrote to Dr. Price pursuant to Dr. Silverman's request of you to get authority before he filled out the Pentagon form recommending George Starbuck's hiring?

A. That is correct.

Q. As a matter of fact, the Pentagon form was not filed [fol. 133] out until you got the answer back from Mr. Randall on October 2, 1963?

A. I don't know, I would have to look at the date of the Pentagon. Sometimes they send the Pentagon over with-

holding approval. If Dr. Silverman's signature is there on the earlier date, it was already in my office then.

Q. It was filled out beforehand waiting for this approval?

A. That is correct.

Q. Did you ever communicate with Dr. Silverman and show him or read to him the contents of P-9?

A. We probably sent a carbon copy of that letter over.

Q. I didn't ask you what you probably did.

A. I don't know. Normally, when we get an official approval back from the central office we send a copy, a photocopy, over. In this case, I don't know whether we did.

Q. You didn't personally communicate the contents of P-9 to Dr. Silverman?

A. No.

Q. You don't personally know whether a copy was sent to him?

A. No.

Q. Referring to P-9, there is a reference to appointing [fol. 134] Mr. Starbuck "as assistant librarian II, U-5, in unallocated temporary service;" would you translate that for us?

A. That's the title and grade as a librarian.

Q. And "in unallocated temporary service"?

A. This is the—

Q. The line item?

A. The lump sum of temporary service money.

Q. What you referred to before as an appropriation of money?

A. That is correct.

Q. He goes on to say, "if you prefer to place Mr. Starbuck in Item 14391, you should amend your certificate of approval to reflect the additional salary required." What is he referring to there?

A. That is the budget certificate of approval. That didn't have sufficient monies in it to pay Mr. Starbuck.

Q. The salary that he was going to be paid?

A. That is correct.

Q. You did not amend the certificate, is that right?

A. The last notice, it was amended in December.

Q. In December, when the quarter, the new quarter budget report came out?

A. That is correct.

[fol. 135] Q. And he was then placed within an item of allocated funds on the budget?

A. That is right.

Q. Do you have anything to do with the budget affairs?

A. Somewhat; affairs, titles and salaries.

Q. Well, let me be more specific. Do any of the budgets for any of the departments or divisions come across your desk for approval or action?

A. Not for approval. They will come for aid, advice and assistance, insofar as increments, titles and things of that nature, annual increases.

Q. Did there come a time in 1964, in the early months, when the budget from the Division of Libraries came across your desk for advice concerning any of the personnel, more particularly Mr. Starbuck?

A. At that time I wouldn't have been aware of it. I wouldn't have been concerned with it.

Q. Have you since seen the budget for the Division of Libraries?

A. Yes.

Q. Has that been approved by the fiscal officers at the University, SUNYAB?

A. Internally, yes.

Q. Has it since been sent on for processing to Albany?

A. That document, no. What they do, there are calculations to find out how much money they need in the library in their own manner, in their own language. Our budget office translates that in State terminology, as far as the money they need.

Q. Has the budget office translated into State terminology the 1964-65 fiscal budget?

A. Yes.

Q. It is awaiting approval, is that it?

A. It has been approved by the Legislature.

Q. The Legislature has approved it?

A. That is correct.

Q. Mr. Poppey, I show you a document consisting of nine pages, all of which are entitled "State University of New York at Buffalo Budget Proposal for Fiscal Year 1964-1965, Division University Libraries." I ask you if you have seen that or had that across your desk?

A. I have seen this. I have seen copies of that.

Q. Have you had occasion as Director of Personnel to examine any of the items on there?

A. Not in detail, no.

Q. Is this the document that you referred to as the internal budget, which is translated by SUNYAB's fiscal office and sent on?

A. That is right.

[fol. 137] Q. It is the quantity of monies needed to perform the jobs and services on this internal budget that has been translated in some form for the State?

A. The totals, yes.

Q. That has been approved by the Legislature?

A. We have received a total amount of money from the Legislature.

Q. Is it the practice then to allocate the monies in accordance with the internal budget that has been adopted at the State University?

A. Yes.

Mr. Lipsitz: May I have this marked as Plaintiff's Exhibit 10 for identification?

(Thereupon document referred to was marked Plaintiff's Exhibit P-10 for identification.)

Mr. Lipsitz: May the record show that what I have been referring to is P-10.

The Court: Yes.

Mr. Lipsitz: I have no further questions.

The Court: Do you have any questions, Mr. Cray?

[fol. 138] Cross examination.

By Mr. Crary:

Q. Mr. Poppey, when the Legislature appropriates a lump sum of money without showing position by line and items, who segregates those amounts and makes them available for expenditure?

A. The Division of the Budget.

Q. Not the State University?

A. No.

Q. The State University does, however, make requests to the Director of the Budget?

A. Yes.

Q. The Director of the Budget actually segregates?

A. Yes.

Q. Now, even if there were money available for a position by title, money has been made available, segregated by the Director of the Budget, would you fill that position and pay an individual out of that item without the approval of the Civil Service Commission?

A. No, sir. The Civil Service Department would have to approve the appointment.

Q. Are you familiar with Rule 3.2 of the Rules of the Department of Audit and Control relating to the certification of the employment of persons in their positions as being lawful by the Civil Service Commission?

[fol. 139] A. Not specifically. If this is the—they must wait until the Civil Service approves it, then they release the check.

Mr. Crary: I would ask the Court to take judicial notice of a filed rule of the Comptroller of the State of New York. This is filed with the Secretary of State. It is published in the official compilation of rules and regulations of the State Department. I have the page from that publication which I would ask your Honor to take judicial notice of.

The Court: Any objection to that?

Mr. Lipsitz: No, sir.

The Court: Alright, I would like to have that left with me. I will take judicial notice of it. Make it Court Exhibit 1.

(Thereupon document referred to was marked Court Exhibit No. 1.)

Mr. Crary: I would like to read the very short first [fol. 140] sentence of that rule:

"The payment of salary or compensation to any person holding a position in the classified service is unlawful unless such person is certified by the State Civil Service Commission as lawfully employed in his position."

By Mr. Crary:

Q. Now, Mr. Poppey, in the policies of the Board of Trustees, which have been introduced in evidence by the Plaintiff, appears a section entitled, "Terminations of service" in which it says, "That the services of members of the academic staff may be terminated at any time for cause," and in the definitions contained in that statement of policies by the Board is a definition of academic staff, which says that, "It is comprised of those persons having full academic rank or qualified academic rank," full academic rank is defined as those holding the title of professor, institute professor, associate professor, institute associate professor, assistant professor, institute assistant professor, instructor, institute instructor, assistant instructor, and institute [fol. 141] assistant instructor. Did Mr. Starbuck, at any time during his employment by the State University of New York at Buffalo, have any one of those titles, to your knowledge?

A. No, sir.

Mr. Crary: Now, may I see the exhibits, please?

By Mr. Crary:

Q. Mr. Poppey, this exhibit, which I believe is P-2, you testified that this was internal in the sense it stayed at the University here at Buffalo?

A. That is correct.

Q. This did not go to Albany?

A. No.

Q. Had nothing further than that document been executed in this matter, would Mr. Starbuck have been added to the payroll?

A. No.

Q. And is this PR Form 75 the further action which was necessary to put him on the payroll?

A. That is necessary to get anybody paid, yes, sir.

Q. Now, there has been introduced in evidence as Exhibit P-3 a copy of form PR 75, bearing the notation on the face of it by the Civil Service Department, and signed by D. Simmons. Is this the whole of the document which was [fol. 142] sent to the Civil Service Department in Albany?

A. No, it is a five or six part stamp-out carbon. I know three copies go to the Civil Service, one or two go to Audit and Control, we retain one.

Q. Can you describe for us what else was on this document as it was sent to Civil Service in Albany?

A. Copy one has on the reverse side of it the application for nomination.

Q. And is that the thing which was signed by Mr. Starbuck?

A. Yes.

Q. And on which appeared Question 7 upon which he noted that he preferred not to answer?

A. Yes.

Q. Do you know where the original of that document now is?

A. It is in the Department of Civil Service.

Q. You do not have it?

A. No.

Mr. Crary: Your Honor, I have a photostatic copy of the document furnished to us by the Department of Civil Service at our request. If counsel has no objection, I would like to introduce it.

[fol. 143] Mr. Lipsitz: It is already attached to Mr. Randall's affidavit.

Mr. Crary: In place of the original.

The Court: We will receive it then.

(Thereupon document referred to was received in evidence and marked Defendant's Exhibit D-1.)

By Mr. Crary:

Q. Did you initiate the preparation of this document?

A. No. The front side is initiated by the payroll office.

Q. Do you know who put the X in the box stating permanent?

A. The payroll office.

Q. Fourteen?

A. The payroll office.

Q. In Buffalo?

A. In Buffalo, yes.

Q. That was put on before it was sent to Civil Service?

A. That is correct.

Q. Now, do you understand the meaning of the words written in ink on this document, "Pending investigation" [fol. 144] in Item 20?

A. Yes.

Q. Do you know who placed those there?

A. The Department of Civil Service.

Q. Can you explain to us what those words mean?

A. The back of the form was not completed and to not delay the payroll, they automatically check these disapproved or approved in this manner so that the payroll can get processed. This means there is some investigation, the investigation unit has to check further on the basis of some information on the reverse side.

Q. Did there come a time when the question of the incompleteness of the application was taken up with you by anybody?

A. Yes. Verbally by Harvey Randall. I received a written communique from the Civil Service through Harvey Randall stating that George Starbuck should complete the back of the form, and explained the requirement.

Q. When did this take place, if you recall?

A. This was going into November or December at this stage.

Q. Was this your first knowledge that the question had not been answered?

[fol. 145] A. No, it was early in October or November when Harvey called me, that the form was not completed. We had started at that time to have him complete the form.

Q. Did you have some conversation with Mr. Starbuck at this time about the question?

A. Yes.

Q. What was the nature of that conversation?

A. I explained the requirements, that all the employees in the classified service had to complete that, that it is a requirement of State law, much the same as the questions on age, height, education, previous mental illness or criminal records. This was one of their questions, it was in the law, and all applicants, if they don't come from a list by a written examination, are asked this on this form.

Q. Have all persons at the University of Buffalo, when in classified service, that is, not in the faculty, unclassified category, who have been employed anew since the merger, been required to fill out this kind of a form and answer that question?

A. Yes.

Q. Have they done so?

A. All of them have.

Q. Is this form, PR 75, the form which would be used to make an appointment in the unclassified service?

[fol. 146] A. No, it is 75 B; something similar, it isn't that form.

Q. It's a different form?

A. Yes.

Mr. Crary: If the Court please, I think those are all the questions I have of this witness.

Redirect examination.

By Mr. Lipsitz:

Q. When was the position that Mr. Starbuck was hired to be placed in in the classified Civil Service?

A. It has all the time been in the classified service.

Q. You say so, is that right?

A. I think the law says so.

Q. You think the law says so. What action has been taken in the form of any documents sent to you indicating that position has been placed in the classified Civil Service of any kind?

A. None.

Q. You said that he could not be paid unless this form, PR 75, were filled out and certificated, is that correct?

A. That is right.

Q. Is there a similar method of arranging for the payment of persons in the unclassified service?

[fol. 147] A. There is.

Q. But it is on a different form?

A. That is correct.

Q. It does not contain on the reverse side the question, that is, Question No. 7?

A. It does not.

Q. Let me ask you this, Mr. Poppey, you said that you called Mr. Starbuck and you explained to him that this is a question like the one on the certificate for the faculty people; is that what you said to him?

A. No.

Q. I don't want to misquote; what did you say to him about that?

A. I said that the faculty people sign a Feinberg Certificate, the non-faculty sign this application for nomination.

Q. Well, do you know whether or not Mr. Starbuck was told that he was a faculty employee?

A. Whether—

Q. Told by anybody?

A. He was probably told. The old terminology was rank without tenure or status.

Q. It is a fact that when the Pentagon was filled out it had marked with a check faculty?

[fol. 148] A. Yes.

Q. He believed he was a faculty person?

A. He never received that form.

Q. He discussed his hiring with Dr. Silverman when he was hired, did he not? When he was hired by Dr. Silverman he had discussion about his status?

A. Yes.

Q. I'm not asking what the discussion was. He certainly had discussions?

A. Yes.

Q. Did you explain the difference in the certificate and the answer to Question 7?

A. When George—yes, we talked about Question 7.

Q. Did you explain, did you show him a copy of the certificate that you referred to?

A. Yes, he had a copy of the certificate.

Q. Did you discuss the differences?

A. I think we talked about both.

Q. The differences are rather significant?

A. Two different forms.

Q. The question they ask is completely different?

A. Yes.

Mr. Lipsitz: I have no further questions.

The Court: Is that all, Mr. Crary?

Mr. Crary: That is all, your Honor.

[fol. 149] The Court: Now, gentlemen, I have discussed with you the problem I have and, as I said, I can resume at

9:30 in the morning. While it is inconvenient for you, Mr. Crary, it is a pretty vital thing that I carry out this commitment that I have this afternoon. Dr. Silverman, can you be here in the morning at 9:30 with reasonable convenience?

Dr. Silverman: Yes.

The Court: We will start at 9:30, rather than 10:00, and we will go through with nothing but short recesses until we finish up, so that we can get you on your way.

Mr. Crary: I am grateful for this, it may give me a chance to see Niagara Falls.

(Thereupon the court was in recess.)

[fol. 150]

PROCEEDINGS OF MARCH 31, 1964, COMMENCING AT 9:30 A.M.:

The Court: Good morning.

Mr. Lipsitz: May I proceed?

The Court: Yes, Mr. Lipsitz.

THOMAS E. CONNOLLY, called as a witness on behalf of the Plaintiff, and being first duly sworn, testified as follows:

The Court: Before Mr. Connolly begins; this business of this three judge court is bothersome to me here, that Mr. Crary raised, and I think it is a real problem in this proceeding. I want to take this testimony because these people are here. If it is proper, then it is; if it is not, why it has no bearing. I am concerned about whether or not, where you asked me to restrain an action of an office of the State, whether Mr. Crary may not be right on this three judge court principal. I am announcing that for this reason; [fol. 151] when we get through with the evidence and these people are sent on their way, I am going to have serious thoughts from you along these lines because it is a real consideration. Alright.

Direct examination.

By Mr. Lipsitz:

Q. State your name?

A. Thomas Connolly.

Q. Where are you employed?

A. State University of New York at Buffalo.

Q. Do you have any degrees, Doctor?

A. Yes, I have a Doctorial Degree.

Q. In what capacity are you employed at the State University of New York at Buffalo?

A. I'm an Associate Professor of English.

Q. How long have you been employed in the English Department?

A. About eleven years.

Q. How long have you been an Associate Professor?

A. Since 1955.

Q. Do you know the organization or institution known as the Senate at the State University of New York at Buffalo?

A. Yes, I do, I'm a member of it.

[fol. 152] Q. Are you known as a Senator in that organization?

A. Yes, I am.

Q. Did there come a time in the forepart of this year when you made inquiry of a lady working for Dr. Furnas as to the persons whom you represented as a Senator?

A. Yes, I had to send a report to the various faculties that I represented and that gave me the occasion to inquire from Miss Martin.

Q. Did you speak to her?

A. Yes, I spoke to her on the phone.

Q. Did you recognize her voice?

A. Yes.

Q. As a result of your conversation with her did you receive something from her?

A. She sent me a list of the members of one of the faculties that I represent, the faculty without rank of tenure.

Q. Do you have that list with you?

A. Yes, I do.

Q. Would you get it for me? Now, I show you what has been marked Plaintiff's Exhibit P-1 for identification, consisting of a memorandum to you, a second page quoting from the Ordinances and Charter of the University of Buffalo, and three other pages listing names and positions; is [fol. 153] that what you received from her?

A. Yes, it is.

Mr. Lipsitz: Alright, I will offer it in evidence.

Mr. Crary: I object to it, your Honor, it is totally irrelevant, incompetent. The issue here is the status of Mr. Starbuck under the Civil Service law of the State of New York. This has to do with a purely intra-faculty organization, the Faculty Senate.

The Court: I think this has a bearing, possibly, on the reason for—I assume this contains the Petitioner-Plaintiff Starbuck's name, as certified?

Mr. Lipsitz: As a member of the faculty.

The Court: Overruled.

Mr. Crary: It cannot possibly affect the legal status under the statutes.

The Court: One of the contentions is he is being let out for failure to cooperate, or whatever you want to call it, failure to comply with certain regulations. This may have a bearing on exactly why, what his status is, the quality of [fol. 154] the man, how he has been—

Mr. Crary: The basis of my objection is it cannot possibly affect his legal status, simply extra legal as far as the application of the Civil Service Law is concerned.

The Court: I'll receive it.

(Thereupon Plaintiff's Exhibit P-1, previously marked for identification, was received and marked in evidence.)

By Mr. Lipsitz:

Q. I'm not going to ask you at great length, Doctor, to identify each and every person on here, but I ask you first if you have read the list of names and positions on here?

A. Yes, I have.

Q. And are those persons, in general, persons who are performing full-time teaching duties or other kinds of duties?

A. No, they perform other types of duties, not associated particularly with any one school or college, but rather for the University as a whole.

Q. In the right-hand column of the last three pages there [fol. 155] appears some words which I would ask you to merely identify what they are?

A. Those are the titles of their positions.

Q. Are they fairly descriptive of the positions the persons hold?

A. Yes.

The Court: I am thinking of this Baggett case we are all familiar with. Now, the status of this man is important, as I view it, in the light of the philosophy that is behind Baggett, where they say at Page 452: "Although the discharge of a State employee for failure to fulfill the condition of employment by signing the loyalty oath carries no necessary inference of disloyalty of the employee, it would be ostrich-like to ignore the practical reality of public opinion which tends to attach a stigma of disloyalty to such a discharge, a stigma which may have a profound effect on the discharged employee's future employment and social and economic status." They go on to say: "The severe, im-[fol. 156] pact of such a discharge upon an employee whose refusal motivated by consideration unrelated to disloyalty invokes protection of due process with compelling force."

Now, if you take that as the philosophy of the Federal Courts, then I think the status, whether it is in the hierarchy of the State Civil Service Commission or the University level, is properly received for consideration and that is why I let it in.

Mr. Crary: May I be heard on that very point? The Baggett case, I am familiar with it as your Honor has read

from it, I think the Baggett case is entirely distinguishable from the situation we have here because there, if I have it right, the failure to subscribe to the oath itself resulted in the discharge. Here we have a situation where the failure to answer this question is not itself resulting in his discharge, because of any inference which follows from his [fol. 157] subversive connection. The only reason that he is here being subjected to the loss of his employment is because he has refused to answer an inquiry, which counsel has agreed is asked under a valid statute. I stress to you—counsel, perhaps, in an effort to get away from the three judge court requirement, has said that he raises no question of the constitutionality of Section 105 of the Civil Service Law. If he raises no question of its constitutionality, he must concede that the Civil Service Commission, by which he is bound by that statute, has the right to make the inquiry as to the qualifications affixed by that statute. If it has the right to make the inquiry, it has the right to expect an answer.

The Court: Well, supposing it does not get the answer; has he not the right to explain the basis for his failure to answer?

[fol. 158] Mr. Crary: If it does not get the answer, the person from whom concededly they had the right to ask the information has obstructed their proceeding to get the information they are entitled to get.

The Court: They don't want any explanations?

Mr. Crary: But the thing that I think is so important upon the point your Honor has made is, under the New York law—this was specifically referred to in the Adler case, which specifically sustained the validity, the constitutional validity of Section 105 of the Civil Service Law. It did it on the basis that if anyone were declared ineligible for continued employment by the State of New York because of a subversive activity or advocacy, he was entitled to a full judicial hearing with all the rights of due process. This meets the due process requirement which the Supreme

Court of the United States laid down. There is inseparable [fol. 159] from this man's—from the inquiry here and any result which may follow, affecting his employment because of the question you asked him and because of the information which is elicited, he has a full protection by the right to a full judicial hearing written into Section 105. This was sustained in the matter of Hughes and was specifically referred to by the Supreme Court as constituting the due process required in this kind of a matter.

The Court: Tell me again what you think this man Starbuck's status has been and is?

Mr. Crary: I think this man Starbuck is in the classified Civil Service of the State of New York; that because he is in the classified Civil Service he is subject to Section 105 of the Civil Service Law and to having his employment status certified by the Civil Service Commission of the State of New York.

[fol. 160] Now, the position must be separated from the incumbency of an individual in it. The creation of a position as a legal post of employment in the service of the State of New York is one thing; the qualifications of an incumbent to hold that position is another. Under the numeric system of the Civil Service of the State of New York, which is mandated by the Constitution of the State, if the Court please, the Constitution says that all appointments in the public service of the State of New York shall be by merit and fitness, determined where practicable by competitive examination. This is the foundation stone of the Civil Service Law of the State of New York. The Civil Service Law then proceeds—these are matters which Mr. Lipsitz might attempt to develop by testimony, but which I submit to your Honor are prescribed by statutory provisions, they are matters of law. The Civil Service Law divides the public [fol. 161] employment in the State of New York into two categories; the unclassified service, the classified service. The unclassified service, again by statutory definition, are those positions the principal function of which are teach-

ing or the supervision of teaching. This is a fairly narrow definition. There has been disputes between the University and the Civil Service Commission as to what comes within and without that definition. But the Civil Service Commission has made a determination that positions which do not directly involve teaching, the instruction of students, are not in the unclassified service.

Now, a position which does fall within the unclassified service, and all positions of faculty members, in the sense of those who hold professorial titles, who do actually teach students, are agreed to be in the unclassified service. Now, [fol. 162] those positions do not come under the jurisdiction of the Civil Service Commission to classify. They are in the unclassified service, and they have no tenure by the Civil Service Law. The Board of Trustees of the State University, in the execution of its own powers to make regulations for the Government of the University, has adopted the policy which has been put in evidence. These policies are the sole source of faculty tenure. They are policies of the Board, they are not statutory provisions. They provided for that kind of tenure only with respect to provisions on the academic staff, as defined in those policies, which include the titles which I read into the record yesterday, which no one of which Mr. Starbuck holds. They provide for three different kinds of appointments; temporary, term, continued. Term appointments may be made for a term of years. This [fol. 163] is the only place in anything related to employment by the University where a term, a period of years, is provided for. It is provided only to the members of the academic staff. Unless such an appointment is made, and made under the policies, by the President of the University, not the President of the institution he recommends, the appointment is made by the President of the University—

The Court: Let me ask you this, if Starbuck signed that Question 7, is it your position that he would be in the same status he is now, or would he be working away as a full-blown librarian and lecturer?

Mr. Crary: Had Starbuck signed, had he answered the question—

The Court: There is a non-classified on there which somebody, some time, has stricken in some manner, not official, just a pencil line. Somebody started him off on the theory that he was non-classified and changed their minds; why? [fol. 164] Mr. Crary: This was put on there at the institution.

The Court: Wouldn't you think somebody would communicate that to him, rather than strike this off like some grade school kid would?

Mr. Crary: What was on the form, your Honor, were the initials N.C., meaning non-competitive. This was stricken off. To answer your specific question as to what his status would have been had he answered this question; this would not have any bearing whether he was faculty or classified service, because he was asked this question on this form because he is in the classified, his position is in the classified Civil Service. Now, had he answered the question, had he answered no, his certification would not have been made pending investigation as it was, because since he did not answer the question the Commission obviously needed further information. [fol. 165]

The Court: Isn't it a fact that you have got this man down with the charwoman and the parking lot attendants and whoever else is out there in this classified business?

Mr. Crary: This is not so, your Honor. At least I like to think—

The Court: Who else is in the class?

Mr. Crary: I'm in the classified Civil Service, I am classified exempt. I am in the classified Civil Service. I point out to you again, the only people in the unclassified service are specific positions which are characterized by law. Elective officers are in the unclassified service; teachers are in the unclassified service, and there are a few others. Everybody else who works for the State of New York is in the classified Civil Service.

Now, once he is in the classified Civil Service, he becomes subject to the jurisdiction of the Commission to make juris-[fol. 166] dictional classification, which means that he may be put in the position—again, not the individual—the position may be put in the non-competitive class or in the exempt class. If either one of those things are done, he is in the competitive class.

The Court: Let me see that 75 form that is in evidence.

Mr. Lipsitz: The exhibits are all here, your Honor.

The Court: I was looking at that Form 75, Question 7. Anybody that has ever been exposed to teaching, in my mind, would have trouble answering that question. What I am interested in is giving Starbuck, if it is proper, a chance to have a hearing, if he wants to explain something he may, that is not my problem. Here's the point, if I had to answer that, and I taught at the University of Buffalo for a while wherein the teachings of Karl Marx, maybe in English [fol. 167] Literature came up for comparison, and I began to talk about the various writings of Karl Marx, the Manifesto or otherwise, I wonder if I would not run into this thing: "Have you ever advised or taught or were you ever a member of any society or group of persons which taught or advocated the doctrine that the Government of the United States or any of its political subdivisions thereof should be overthrown or overturned by force, violence or any unlawful means." If you ever, in connection with the course, discussed the Manifesto, the works of Lenin, wouldn't you be teaching within the meaning of that oath?

Mr. Crary: Yes. This again is a question asked because of Section 105. 105 has been specifically construed in the Adler case, particularly, as being a constitutional qualification for public employment. It has been construed as re-[fol. 168] quiring the knowledge of the unlawful purpose to bring about the downfall of the Government.

The Court: I know I have studied that myself in connection with Smith Act cases; I know the doctrine of Karl Marx and Lenin. Does that make me an advocate because I know about it?

Mr. Crary: The word advocate in the context—

The Court: Teach or advocate.

Mr. Crary: The word advocate, in the context of 105, means to advocate it as a doctrine and believe, and not merely to teach about it. There is a statute—

The Court: That is what I have in mind; Starbuck should be given a right to explain.

Mr. Crary: The point I wish to make about that, your Honor; had he answered the question yes, let's assume the worst—

The Court: If he answered the question yes, he would be in great shape.

Mr. Crary: Had he answered the question yes, he would not have been by that answer automatically deprived—

The Court: He would be given a hearing?

[fol. 169] Mr. Crary: He would not have been automatically deprived of his employment. There is no statute which says that a yes answer automatically deprives him of it. That would have led to further investigation.

The Court: Alright. He said something else, he said: "I prefer not to answer that now until I am satisfied of the relevancy or otherwise of the question," why shouldn't he have a right to explain what he means?

Mr. Crary: Mr. Poppey's testimony indicated that he did try to explain to him why it was necessary.

The Court: Poppey is just an administrator. I am talking about a hearing that he would be entitled to if he was a professor.

Mr. Crary: Had he answered the question yes, it would have led to further investigation by the Civil Service Commission.

The Court: He gives you some hint he is not going to stand and take the Fifth Amendment.

[fol. 170] Mr. Crary: Until and unless the Civil Service Commission on the further investigation had made a finding that he did, within the meaning of 105, knowingly and unlawfully—and those elements are in it—advocate the vio-

lent overthrow of the Government, it could have taken no action. Once it made that finding, if it would, then under 105 would be required to declare him ineligible for continued employment by the State. But when that day arrived he is then protected by 105 with a full right to a de novo judicial hearing on the issue of whether he is or is not.

The Court: In other words, you say he has got to answer something yes or no?

Mr. Crary: I say to your Honor that the cases decided by the Supreme Court have uniformly said that where an individual is asked a question, which the public body, the State office or body, has a right to ask him, and he refuses to answer, he is then guilty of wilfully obstructing a law-[fol. 171] ful inquiry by a public body, and for that reason alone is no longer qualified to retain public employment.

The Court: I see your point.

Mr. Crary: I think this is the position, I think this can be supported by the cases.

The Court: Alright. I am glad to have your comments.

Mr. Lipsitz: May I comment in a summary fashion about several things that Mr. Crary said? First of all, what he is saying, his view of the law is that the person who answers the question yes, in which case there is a further investigation, and ultimately ends in a hearing—if you answer yes, that person is entitled to a hearing—but the person who is discharged for misconduct, that is, for refusing to answer, is not entitled to a hearing. I don't know of anywhere that principal is supported in any cases in which the doctrine of [fol. 172] the right to hearing by State employees in educational institutions has been and is being developed. This is exactly what Mr. Crary is saying. One last thing; he said he assumes that Question 7 on that form is a question which they have a right to ask him. I would point out that we haven't mentioned in this hearing Section 3022 of the Educational Law, which refers to the fact that the Board of Regents shall adopt, promulgate, enforce rules and regulations for the disqualification or removal of superin-

I know about it?

tendents of schools, teachers or employees in the public school system in any city or school district of the state, and the faculty members and all other personnel and employees of any college or other institution of higher education owned and operated by the State. They have promulgated such rules and those rules have resulted in the requirement [fol. 173] that the certificate, which is attached to our application as Exhibit 5, is the thing that has to be signed by all employees. That is what 3022 says, your Honor. It doesn't say all non-classified employees, it says all employees, it is very specific. It says superintendents, teachers or employees. They assume for their own purposes, and everything is always explained away by saying that that is an internal arrangement someplace, they assume somebody sitting someplace has a right to tell Starbuck that he must answer that question; whereas, the law says, and the rules of the Regents as promulgated say, that he, being an employee, is to be governed by the rules of Regents. They don't go along with that. That is a law they would like to ignore.

Mr. Crary: If your Honor please—

Mr. Lipsitz: That is just in response to the very lengthy remarks of Mr. Crary.

[fol. 174] Mr. Crary: The so-called Feinberg law, which counsel refers to as 3022 of the Education Law, by its terms it was designed to supplement and enforce Section 105. The Civil Service Department long before the Feinberg Law was enacted, had the right and the duty to enforce 105. It is doing so directly here. The rules of the Regents do not make specific provisions with respect to employees, the faculty members and employees of the State University. The rules are restricted to the public schools and the colleges of the state are not in the public school system. Here the Feinberg Law has not become involved because the Civil Service Law is to enforce Section 105. The only purpose of the Feinberg Law ever was to enforce and provide a means for supplementing Section 105.

The Court: You say this University of Buffalo or this State University at Buffalo is not part of the public school [fol. 175] system?

Mr. Crary: Not part of the public school system. The public schools are the elementary and secondary schools operated by the school districts and the boards of education. The higher educational institutions, while they are part of the University of the State of New York, they are not public schools, they are not governed by the provisions of law which relate specifically to the public schools. The teachers in them are not public school teachers, they are college professors.

Mr. Lipsitz: May I say that this is indeed shocking. Every single member of the University of Buffalo staff, faculty people and I understand—well, faculty people, pardon me, I am restricted to so-called faculty people—received a communication last fall or early winter. The communication said: "Enclosed herewith is a certificate"—this is the certificate—"and enclosed herewith is a copy [fol. 176] of the Board of Regents rules." I propose to introduce that by stipulation, Mr. Tiffany said he would stipulate, I believe, those are present and are true copies. It is under those rules that you are required to sign this certificate. Mr. Crary, with what I think is with some degree of audacity, is saying the Feinberg Law and its rules do not extend to faculty members of higher institutions of learning.

Your Honor, in 1953 the law was specifically amended, Section 3022, to add the words, "or rather institutions of higher education owned and operated by the state." They took the same rules which they had promulgated before the amendment, which were designed—it is true they were designed for public schools, secondary and elementary school teaching people—they took the same rules and they told I don't know how many it was, nine hundred [fol. 177] or one thousand people, at this institution, "By those rules, as of 1963, you have to sign this certificate."

He said those rules do not apply to employees of a state institution of higher learning.

Mr. Crary: I haven't said that, your Honor. This is an illustration of the confusion into which this case is being thrown. I have said that in the instant case we are not dealing with faculty members to whom this certificate—who have been asked to sign these certificates, we are dealing with a classified civil service employee who has failed to answer a civil service question.

The Feinberg Law, as such, is not involved in this case. The Feinberg Law, because the public schools and the colleges maintained by the State are not the same thing, was a method in 1953 to extend the Feinberg to make its provisions applicable to those employees of State [fol. 178] university institutions, faculty and others alike. But the Feinberg Law is simply an implementing statute. What it did, it set up a procedure whereby the Regents would conduct hearings to determine and list those organizations which were subversive, after which any proof of mere membership in that organization became presumptive, prima facie evidence of knowing membership, knowing its unlawful purpose; that is what the Feinberg law did. We are not involved in that here because the man has not been asked if he is a member of the Communist Party. He has been asked a question in the terms of Section 105 of the Civil Service Law by the Civil Service Department.

The Court: Excuse me. Now, one of my purposes in getting started early this morning was to get these people from the University on the stand and finished and on their way. I have time later, and we will go into it. From time [fol. 179] to time I might ask you to comment. But this is not the last, so let's go on with the evidence now.

Mr. Lipsitz: Can we stipulate this letter was written and you received a copy, Mr. Crary?

Mr. Crary: Yes.

The Court: Alright.

By Mr. Lipsitz:

Q. Dr. Connolly, did there come a time in the fall of 1963 or the early winter of 1963 when you were asked to sign a certificate for the University?

A. Yes, in December.

Q. December of 1963?

A. Yes, sir.

Mr. Crary: If the Court please, I must object to this line of testimony on the grounds it is completely irrelevant to any issue here. The Doctor's rights are not involved nor his status, what he may have been asked to do. We are concerned solely with the Plaintiff Starbuck.

[fol. 180] The Court: Overruled.

By Mr. Lipsitz:

Q. I show you what has been attached to the application for an injunction here as Exhibit 5, consisting of a document entitled "State University of Buffalo, New York," underneath which there is a caption, "Certificate," and I ask you to look at that, read it, and then tell me whether or not it was a certificate in identically that form or otherwise you were asked to sign?

A. Yes, with the one exception that the date 1955, we were instructed to strike out and write in 1959 in there.

Q. Where the date appears in the last paragraph?

A. I think it was 1959.

Mr. Lipsitz: Instead of offering this as a separate exhibit, may I refer to it as Exhibit 5?

The Court: Yes.

By Mr. Lipsitz:

Q. Were you alone in being asked to sign this?

A. No, all members of the faculty were asked.

Q. As far as you know?

[fol. 181] A. Yes.

Q. Consisting of approximately how many people?

A. I would guess about 900 or maybe 1000 people.

Q. Now, was that request to sign this accompanied by other documents?

A. There was a pamphlet.

Mr. Lipsitz: Would you mark this as Plaintiff's Exhibit 11 for identification?

(Thereupon pamphlet referred to was marked Plaintiff's Exhibit P-11 for identification.)

Mr. Tiffany: You are introducing the rules. Well, of course, the position of the Board of Regents is, your Honor, that no cause of action is alleged against the Board of Regents at all. I wouldn't want my stipulation prejudiced on the position of the Board, namely there was no cause of action alleged against the Board.

Mr. Lipsitz: I am asking that Mr. Tiffany agree that this is a true copy.

The Court: You recognize it as the rules of the Board [fol. 182] of Regents?

Mr. Tiffany: Yes.

The Court: I don't take an inference you consider yourself involved in the litigation. We are trying to vouch for this instead of making proof of it.

Mr. Crary: This is the official compilation by the Regents.

Mr. Lipsitz: It has been identified. I offer it in evidence. It is that document which accompanied the request to sign the certificate, is that right?

The Witness: Yes.

(Thereupon Plaintiff's Exhibit P-11, previously marked for identification, was received and marked in evidence.)

Mr. Lipsitz: Will you mark this for identification?

(Thereupon document referred to was marked Plaintiff's Exhibit P-12 for identification.)

By Mr. Lipsitz:

[fol. 183] Q. I show you Plaintiff's Exhibit P-12 for identification, and I ask you if you can identify that document?

A. I believe this was the covering letter that accompanied both the certificate and the pamphlet.

Q. When you say you believe it was, do you recognize it or not?

A. I believe the copy I saw was a copy of this, not in this printed—

Q. Was the substance of it the same?

A. The substance was the same.

Q. Was it subscribed by a person named J. Lawrence Murray?

A. Yes.

Mr. Lipsitz: I offer this in evidence.

Mr. Crary: This is a correct copy, your Honor. Again, I would object to its relevancy to any question involved within the issues of this case.

The Court: Overruled; received.

(Thereupon Plaintiff's Exhibit P-12, previously marked for identification, was received and marked in evidence.)

[fol. 184] By Mr. Lipsitz:

Q. Dr. Connolly, do people working in the University have any particular time of year where they seek employment, is there any custom or procedure?

A. Usually at the time their professional societies meet for the national meetings, this is the time that people make contacts with other institutions.

Q. Well, more specifically, if a person is dismissed from a position at the University in April or March or February, is there any problem in obtaining other employment at that time in another University or institution of higher learning?

A. It would be usually very difficult to cut out and in in the middle of a term.

Mr. Lipsitz: I have no further questions.

Cross examination.

By Mr. Crary:

Q. Doctor Connolly, you say you are a member of the faculty?

A. Yes.

Q. What is your title?

A. Associate Professor of English.

Q. Associate Professor of English. You said also that faculty members were asked to sign this certificate which counsel showed you?

[fol. 185] A. Yes.

Q. Was anyone other than faculty members asked to sign this?

A. Not to my knowledge.

Q. Were you asked to answer Question 7, which appears on PR 75 form?

A. No.

Q. You were asked to sign the certificate but not to answer the question?

A. That is right.

Mr. Crary: That is all.

Redirect examination.

By Mr. Lipsitz:

Q. I neglected one other question. Do you know, is there a position of lecturer that is utilized at the State University of New York at Buffalo?

A. Yes.

Q. And what kind of a position is a lecturer?

A. It is a position usually intermediate between the position of instructor and the position of assistant professor.

Q. Does it involve teaching duties?

A. Yes.

Mr. Lipsitz: That is all.

Mr. Crary: That is all.

[fol. 186] The Court: That is all.

(Witness excused.)

Mr. Lipsitz: Doctor Silverman, please.

OSCAR A. SILVERMAN, called as a witness on behalf of the Plaintiff, and being first duly sworn, testified as follows:

Direct examination.

By Mr. Lipsitz:

Q. Dr. Silverman, in what capacity are you now employed by the State University of New York at Buffalo?

A. Director of Libraries and Professor of English.

Q. How long have you been Director of Libraries?

A. Since February 1, 1960.

Q. You became a Director of Libraries preceding the date of the merger, correct?

A. Correct.

Q. At the time that you became the Director of Libraries did you occupy any other supervisory position at the University of Buffalo?

A. I was Chairman of the Department of English.

Q. When did you cease being the Chairman of the Department of English?

[fol. 187] A. June 30, 1963.

Q. So that that position transpired the take-over in 1962?

A. Yes.

Q. Now, as the Director of Libraries, what libraries do you direct, is there any one?

A. I direct presumably all the libraries of the University, the State University of New York at Buffalo; Lockwood Memorial, Harriman, the Chemistry Library, the Engineering Library, the Physics Library, the Health-Science Library, and nominally the library of the Law School.

Q. Nominally, did you say?

A. Yes.

Q. Now, have you ever been instructed in writing as to your authority regarding hiring for the library staffs?

A. No.

Q. Do you have authority to hire for the library staffs or did you believe that you did before you listened to the testimony in this case? I'll withdraw the question. Do you have authority to hire for the libraries?

A. I have so assumed that I have authority to make recommendations.

[fol. 188] Q. Have you exercised the authority that you have since you have been director of libraries?

A. I have.

Q. In approximately how many instances?

A. Approximately twenty professional librarians, perhaps forty or fifty people in clerical and secretarial positions, and I should think several hundred part-time student assistants.

Q. Now then, has the procedure that you have followed in recommending hiring changed since you became Director of Libraries?

A. Yes.

Q. Tell us the changes that have occurred, that is, what you did before and what you did after the change?

A. With the merger with the State University it became necessary to clear all positions through the Director of Personnel, Mr. Poppey. Previous to the merger, positions

were normally cleared through the Vice Chancellor, then called, for Educational Affairs, Dr. Anderson. These positions were cleared, I assumed, on the authority of my recommendations which I made, having been allotted a budget. The same forms were used after the merger as before, the form previously referred to in this proceeding [fol. 189] as the Pentagon; a copy of which I sign for every person in the libraries; professional, non-professional, students.

Q. In other words, this is approximately in excess of two hundred people, including part-time people, that you have hired?

A. Yes.

Q. The difference in procedure before and after the take-over is that after the take-over you cleared these through Mr. Poppey's office?

A. Yes.

Q. Then—

A. May I add that often these matters were discussed with Mr. Poppey and with Dr. Anderson, especially in the case of a rather important appointment, such as the Director of the Health-Science Library, for whom special arrangement, as to the budget, had to be made. I might add that such arrangements, sometimes slow, were made.

Q. Now, I think you answered this question; none of your recommendations have ever been repudiated or failed to have been approved, is that correct?

A. To the best of my knowledge.

Q. Now then, in connection with the staffing of the libraries, is there a budget for the Division of Libraries? [fol. 190] A. There is.

Q. Now, does this budget become reduced to a written form of some kind?

A. It does.

Q. Do you have the budget for 1963-1964 with you?

A. I have.

Q. Pursuant to my subpoena?

A. I have. '64-'65.

Q. Yes, the '64-'65 budget. This is already marked for identification as Plaintiff's Exhibit 10, Dr. Silverman, consisting of—

A. I didn't bring the '63-'64 budget.

Q. —consisting of nine pages. I ask you if you would explain how you come into possession of this document, and what information it sets forth, and the procedure of obtaining it?

A. About the end of May or early June we are asked by the Director of Personnel and the Vice President for Educational Affairs to prepare a proposed budget to go into effect the following year. That is to say, very soon now we shall be asked to prepare a tentative budget for '65-'66.

Q. What is the fiscal year beginning, the date, if you know?

[fol. 191] A. May I explain that a bit? The fiscal year begins April 1st, as I understand it—

Q. You have started—

A. But my fiscal year begins July 1st, as far as new employees are concerned. If you examine this budget, for example, you will see that a certain sum of money has been appropriated for '64-'65 on one side of the budget, then it is reduced on the other because it does not become effective until July 1.

Q. In other words, by two-twelfths or one-sixth the amount of money has been reduced?

A. Three-twelfths, one-quarter.

Q. But this is the budget, P-10, which is the result of recommendations that you had made last May and June of 1963?

A. That is correct.

Q. For the forthcoming fiscal year?

A. We go on; that budget was discussed; Vice President Anderson presumably had discussions with others, and in the natural course of events certain of my recommenda-

tions were unhappily reduced, but finally a tentative budget was set up, I believe it went to Albany some time in the early fall to be incorporated in the budget manual, and in the normal course of events I believe that budget would be [fol. 192] approved today to go into effect tomorrow, the 1st of April, and becomes then my official budget, as I understand it.

Q. This document that you have, however, is prepared by whom, if you know? This particular document?

A. In the form that I have it, I presume it was prepared by the Personnel Department, under the supervision of Vice President Anderson.

Q. At this institution in Buffalo?

A. I assume so.

Q. Who gave it to you?

A. It comes through the mail under the name of G. Lester Anderson, Vice President for Educational Affairs.

Q. You mentioned that you started to prepare this budget in May or June of last year at the time that Mr. Starbuck was not employed?

A. Yes.

Q. Does Mr. Starbuck's name appear on this budget, and if so, point out the page number?

A. This is the budget for '64-5, budget to go into effect. The name appears on the last—is the last name on page one, number 15, account line 4391.

Q. If you started to prepare this last May or June, how [fol. 193] does his name get on there in the interim?

A. Through my sending in a Pentagon last September 23rd, dated October 1, which then went through the procedure which you outlined yesterday, and when I get a copy of my budget I find that Mr. Starbuck's name is on it. I have nothing further to do with it.

Q. I show you what has been received in evidence as Plaintiff's Exhibit P-2, and I ask you if that is a copy of the so-called Pentagon that you prepared and submitted for Mr. Starbuck?

A. That is one of the copies signed by me.

Q. Now, in the form that you have Plaintiff's Exhibit P-10, and particularly with regard to the appearance on Page one, Line 15, of Mr. Starbuck, what information is conveyed to you, as far as you understand that?

A. "Starbuck order Library," which is part of the Department of Acquisitions. "NS", not statutory, I believe. "C", under term, continuing. "12" under months, meaning term. The salary is appropriated for '63-4.

Q. Was that a different salary from what he was earning in his initial year?

A. I said clearly, I hope, '63-4. That was appropriated [fol. 194] in 1963-4. We skip a column, we have 1964-5 requested, with a statutory increment shown there, an increment of \$258.

Q. Alright.

A. The other columns are not filled out.

Q. Does that mean that in the budget that was returned to you by Mr. Anderson's office it appears that a position for George Starbuck, appropriating that amount of money, has been recommended to the State University of New York?

A. That is what I assume, yes.

Q. For example, does your name appear on there?

A. Yes.

Q. Which page?

A. First page, first line.

Q. Does it convey the same information concerning your prospective employment?

A. Yes, but unhappily it does not show an increment.

Q. I see in the column entitled "term" there is a C after your name and a C after Mr. Starbuck's name; does that convey the same information, continuing?

A. Continuing.

Q. Tell us—

A. Also, you have an I in front of mine, that means [fol. 195] indefinite.

Q. Now, what does continuing, without a letter I mean, in respect to Mr. Starbuck, as far as you understand it?

A. As far as I understand it, C took the place of I even before the merger to indicate that the man was not on a term appointment. The term appointment being precisely what it says. We sometimes in the faculty appoint an assistant professor or an instructor for a term of years; three or four; and after he receives tenure that the term appointment is dropped and the letter C is used. Now, it used to be it was I—

Mr. Crary: Your Honor, I would like to interrupt. May I point out that the complaint alleges that Mr. Starbuck is a non-tenured employee. The term continuing, under the policies of the Trustees, means tenure. Now, we take the allegations of the complaint, he is alleged to be non-tenured. Of course, as a matter of law, we say he is non-tenured.

The Court: I will hear what the Doctor has to say. We understand. You may proceed.

[fol. 196] By Mr. Lipsitz:

Q. Does that complete your explanation of what the C means?

A. As far as I know.

Q. Going back to September of 1963, did there come a time when you had discussions with Mr. Starbuck about employing him?

A. Yes.

Q. Had you known Mr. Starbuck before then?

A. Yes.

Q. How did you get to know him?

A. In 1961 I invited Mr. Starbuck to come here in the summer to read his poetry and to speak about poetry with another person in a joint program during the summer school, on the recommendation of people whom I trusted in Boston.

Q. Following that did there come a time when Mr. Starbuck made inquiry of you, in written form, as to the possibility of employment at the State University of Buffalo?

A. Mr. Starbuck wrote to me from Italy where he was living on Prix de Rome, and asked about the possibility of employment. Not knowing that I was no longer Chairman of the Department of English, he wrote with the idea of being a teacher.

[fol. 197] Q. Did you respond to him?

A. I made a response.

Q. As a result of that, did he and you have conversation at Buffalo, New York, some time in September, 1963?

A. First by phone from New York and then Mr. Starbuck came to Buffalo to be interviewed, not for a departmental job in English, for a possible library job.

Mr. Lipsitz: Now, I think you retained that budget. I want to offer that in evidence. I will see that you are supplied with a copy of it. May I have permission to photostat this and replace it with the photostatic copy?

The Court: You are going to give the original back to the Doctor and offer the photostat?

Mr. Lipsitz: Yes.

The Court: You have no objection?

Mr. Crary: No objection.

The Court: That may be done.

Mr. Crary: No objection to the substitution of the copy.

By Mr. Lipsitz:

[fol. 198] Q. Following conversations with Mr. Starbuck did you offer him any employment at the State University of New York at Buffalo?

A. I did.

Q. When did you offer him this employment?

A. During the week of September 16th, when we had two telephone conversations.

Q. Was that following or before his coming here?

A. Before he came here. I must—I'm sorry, I made a mistake. We discussed the possibility of employment dur-

ing the 16th to the 20th, and no employment was arranged until he came here on the 23rd.

Q. Of September?

A. Yes, of September.

Q. Now, as a result of his coming here, did you make an offer to him and did he accept that offer?

A. I made an offer to him at that time subject to its being approved by the Department of Personnel.

Q. What was the offer you made to him?

A. An offer of an Assistant in Acquisitions, with special concern for ordering books, at a salary stated in that budget—I have forgotten.

Q. Sixty-four something?

A. Sixty-four something.

Q. Did he accept that offer?

[fol. 199] A. After the formality of having the appointment approved through Mr. Poppey, who, in turn, courteously, I think, phoned.

Q. I will go into that. Did Mr. Starbuck eventually accept the offer?

A. Yes.

Q. During the course of your conversation, did you mention to him how long he might expect to be employed at the University?

A. The normal twelve-month appointment with the idea of continuing appointment if he proved satisfactory to us and he wanted to stay.

Q. Did you talk to him about the need of taking an examination for the position?

A. No.

Q. Did you talk to him at all about the need for signing a form of any kind in which the question known as Question 7 would appear?

A. No.

Q. Did you talk to him in any fashion about signing a certificate in the form of the certificate which faculty members have been asked to sign?

A. No.

Q. Were you at that time told by anybody in authority over you that signing that certificate or answering that

[fol. 200] question was a condition of a person being employed by you?

A. That is a difficult question for me to answer. I had not been told specifically but I think, if I may say so, that I was derelict in my duties in not being aware of this.

Q. Dr. Silverman, in September of 1963, what faculty members, if you know, had been asked to sign a certificate?

A. None, as far as I know.

Q. And were you ever advised or told of the requirement of persons coming to work in the library to answer that question, which is Question 7?

A. No.

Q. You were aware of the Feinberg Law, is that correct?

A. I had discussed the Feinberg Law previous to the merger with Vice Chancellor, then called, Puffer.

Q. In any of your discussion before September of 1963 about the Feinberg Law, were you ever advised by anybody in authority over you that a certificate or question of any kind had to be answered or signed in respect to the Feinberg Law?

A. After?

Q. As of September, 1963?

A. After September, 1963 I asked Vice President Puffer [fol. 201] if he and I had discussed this and he recalled to me that the Feinberg Law would be in operation after the merger, and he told me that it had been discussed in the merger proceedings. In other words, he recalled these things to my memory in conversation after September, 1963.

Q. Regardless of whether you had a present recollection in September, 1963, or whether it was refreshed after 1963, was anything brought back to your mind as to the requirement—as to being told of the requirement that a certificate would have to be signed or a question answered as a condition of being employed, as distinguished from the application of the Feinberg Law itself?

A. No.

Q. Then after your meeting with Mr. Starbuck, you started to tell us that you called Mr. Poppey, will you go

ahead and tell us what you and Mr. Poppey spoke about in respect to Mr. Starbuck?

A. I asked Mr. Poppey, or perhaps William B. Ernst, the Associate Director of Libraries, may have been involved in this as well as I, whether we could expedite the approval from Albany for the appointment of Mr. Starbuck.

Q. Did you explain to Mr. Poppey what position you [fol. 202] wanted to appoint him to?

A. Yes.

Q. Did you mention the salary?

A. I did.

Q. Did you mention the length of the employment?

A. I assume that we spoke of it as twelve months appointment. It was certainly so noted on the Pentagon I sent.

Q. Did Mr. Poppey tell you he would see what he could do?

A. Mr. Poppey checked with the appropriate people in Albany and did it courteously and quickly because we were anxious to have the position filled immediately and we were anxious to provide Mr. Starbuck with the position as soon as possible.

Q. Did Mr. Poppey report back to you anything about this pursuant to your request for approval to hire Mr. Starbuck?

A. He did.

Q. What did he report to you?

A. Reported that the approval had been given.

Q. As a result of that did you then submit to him the Pentagon form, P-2?

A. Yes.

Q. In other words, you cleared this through Mr. Poppey [fol. 203] before you put in the Pentagon form?

A. That is the normal course, yes.

Q. By the way, is that the normal course of recommending people that have otherwise been employed by you in the Library Department?

A. Yes.

Q. Now, Dr. Silverman, as the head of the English Department, the Chairman of the English Department, did you have authority to sign Pentagon forms?

A. No.

Q. Who had the authority over you in respect to anybody that you would like to have employed, as Chairman of the English Department?

A. The Dean of the College of Arts and Sciences.

Q. You are subordinate to him in terms of employment rights and abilities?

A. Precisely.

Q. Is that right?

A. Yes.

Q. Dr. Silverman, in September of 1960, when you became—that is when you said you became Director of Libraries?

A. No, February, 1960.

Q. February, 1960; approximately how many full-time people did you have in the library, in the Division of [fol. 204] Libraries?

A. Clerical and professional, totaling approximately forty-five.

Q. At the time that Mr. Starbuck was notified that he was going to have to be terminated, how many did you have on the staff?

A. Clerical and professional, approximately one hundred, perhaps one hundred ten.

Q. Now—

A. This is excluding part-time.

Q. I said full-time. This increase from the forties to around a hundred all has been a result of recommendations by you of hiring, is that correct; you or Mr. Ernst?

A. Yes.

Q. Directly by you in the signing of the Pentagon form?

A. I only am authorized to sign the Pentagon.

Q. Have some of those positions, that is the personnel hired by you, been filled since the merger date?

A. Yes.

Q. And since the merger date have some of those positions been filled without taking any examination?

A. Yes.

Q. In connection with those, about how many of those [fol. 205] have been filled without taking the examination?

A. We must discriminate between professional and non-professional. The clerical people have taken an examination, and are not recommended to us until they have passed the examination satisfactory to the Personnel Office. But the professional people have not taken an examination, except, I believe, in one case where there was an oral examination, pro forma, I would think.

Q. You mean created by you or Mr. Ernst?

A. Mr. Ernst, of a professional.

Q. In other words, subtracting the one, how many professional appointments have you recommended without an examination since the merger?

A. Between eighteen and twenty-two.

Q. Have you ever been informed concerning any of those that they were only certified to be employed for a period of six months or four months or any period?

A. No.

Q. Did there come a time when I showed you an affidavit which appeared to be signed by Harvey Randall in your office?

A. Right.

Q. Last week, did you read that affidavit?

A. I did.

[fol. 206] Q. Before you read that affidavit were you aware of any claim ever that Mr. Starbuck was only hired until April 1, 1964?

A. No, except as I have understood in the last day, that is, perhaps should have understood by inference before, that the budget year begins April 1st. But I have assumed that this is a bookkeeping or accounting device and I have assumed that our operation will continue.

Q. Well, my question is, were you ever informed by anybody in the institution that Mr. Starbuck's employment was only good until April 1, 1964?

A. No.

Q. And the first time you heard about it is when you read Mr. Randall's affidavit, is that correct?

A. Well, if that's what Mr. Randall's affidavit states. I'm not—

Q. I call your attention to Paragraph 14 of Mr. Randall's affidavit. I think you have a copy of it?

A. Yes.

Q. Excuse me, not 14, Paragraph 10, the last paragraph on page two and the last sentence thereof in which he said, "It is expressly valid in any event only until April 1, 1964."

A. I did not make an assumption.

[fol. 207] Q. Was this the first time you were told of a claim that is what his employment was?

A. Yes.

Q. Following the submission by you of the Pentagon form, were you given any notice of any kind that Mr. Starbuck was approved to be hired, or was that what you received verbally by Mr. Poppey?

A. That was received verbally by Mr. Poppey. Then after the Pentagon was sent over and not returned, Mr. Starbuck began his employment, and we made the assumption he was employed, of course.

Q. He started receiving payroll checks eventually?

A. With the usual delay of a new employee, he did.

Q. Now, I take it when you talk about professional employment; Mr. Starbuck's position was in the professional grouping of employees?

A. Yes.

Q. Dr. Silverman, did there come a time in the spring of 1963, at Utica, New York, where you and other chief librarians had a meeting with Mr. Randall?

A. Yes.

Q. Was this a meeting of chief librarians of the State University of New York institutions?

A. The various units, yes.

Q. During the course of that meeting was there any [fol. 208] discussion about whether professional positions in the library should be classified or unclassified?

A. That is right, there was.

Q. Did you make any statement at that time?

A. Not that I recall in detail.

Q. Did Mr. Randall?

A. Not that I recall. I think I can give you the substance.

Q. Give us the substance of the discussion?

Mr. Crary: I object. This is getting fairly far afield and remote from any issue presented here; the conversation is outside of the scope of the issues. The question of what the opinions of individuals were in matters which are controlled by State law. I object to this line of testimony.

The Court: This is Mr. Randall, isn't it, and the Doctor talking?

Mr. Crary: Discussions at a meeting.

The Court: Overruled. What is the date of that?

Mr. Lipsitz: Dr. Silverman can identify it, he said the spring of 1963. Do you remember more precisely when it was?

The Witness: April, 1963 at Utica.

[fol. 209] The Court: You may proceed.

By Mr. Lipsitz:

Q. Tell us the substance of the conversation; this is in respect as to whether these should be classified.

A. Very briefly, the whole problem of whether the professional librarian should be considered an educational officer and hence be placed in the unclassified grouping, or be considered a classified person, has been a big concern

of the profession of the librarians for some time. Librarians take the view they are educational officers since they are indirectly always and sometimes directly associated with the educational process, and hence they should like to have the same kind of status that is accorded faculty, which is that of the unclassified. Sympathy, it seems to me, has been evinced by members of the State University Central Administration toward this desirable end. This, in effect, was the substance of our conversation. I could not be more specific.

Q. At the present time have you been advised whether or not the position held by Mr. Starbuck is in the competitive civil service class?

A. Only as I have learned through listening to the [fol. 210] evidence given yesterday.

Q. Before you came yesterday have you ever received advice from anybody in the State University about that?

A. No. I think I must be allowed to explain that, if I may, your Honor?

Q. Go ahead.

A. It has been a difficult problem about the classification. I don't think it quite fair to Mr. Randall and the State University people to assume they have not been very, very solicitous about the problem of classification or the non-classification of people in the libraries. In a sense, the fact there were no classifications made and, I suppose, no examinations given, might be considered evidence of their concern. These people are professionals, and should be accorded the same rights and privileges as faculty.

Q. Well, at the present time, however, there has been no competitive examination?

A. That is correct, there is no competitive examination, to the best of my knowledge.

Q. You haven't been told that?

A. At the State University of New York at Buffalo.

Q. Is there such a thing as a written job description [fol. 211] for the job held by Mr. Starbuck?

A. Job descriptions were prepared some time ago when it was announced by the State University that Civil Service would come and classify the library jobs. That classification was never done, the job descriptions were prepared.

Q. By you or somebody under your supervision?

A. Under my supervision.

Q. Do you have that job description here?

A. I have several job descriptions here.

Q. Were they submitted to anybody?

A. They were submitted to the civil service people.

Q. Have you ever been told those constitute any official approved job description for the job of assistant in acquisitions?

A. They haven't been sent back to me with such notation. We have operated more or less along these assumptions.

Q. Dr. Silverman, I think you were here yesterday when I read from Section 64, Subdivision 3 of the Civil Service Law. I don't want to burden the Court with re-reading those sections. That is the section on temporary appointment and which the State claims was the authority for hiring Mr. Starbuck. Did you ever discuss with Mr. [fol. 212] Poppey or Mr. Randall, or anybody else, a restriction on your right to hire, in terms of having to certify that the job was on the occasional basis?

A. No.

Q. Is Mr. Starbuck's job on an occasional basis?

A. Not to my knowledge.

Q. When you hired him did you intend that he work full time?

A. I did.

Q. Has he worked full time?

A. Yes.

Q. Did you ever discuss with anybody, Mr. Poppey or Mr. Randall or anybody else, the desirability or the request

to hire Mr. Starbuck on a full-time or regular part-time basis in a temporary position to conduct a special study or project not exceeding eighteen months?

A. No.

Q. Was there any such consideration involved in hiring Mr. Starbuck?

A. No.

The Court: What does Mr. Starbuck do out there in the ordinary course of a day's work? Do the students come and ask for his advice and counsel on literature, for [fol. 213] example? What does he do?

The Witness: No, your Honor, the students do not normally have access to Mr. Starbuck. In his position in the library he works in the department commonly called acquisitions or sometimes called book selection, and specifically he attends to the ordering of books, although makes selections. His judgment is used in deciding which, among several, editions might be bought, or in some cases whether or not a book might be bought. He does have contact fairly frequently with members of the faculty who do the bulk of the suggesting of the ordering of books, but not the students.

The Court: But he would draw upon his skills as an English major in his work, would he?

The Witness: He would. Not only as an English major and graduate student, also from his editorial experience in a publishing house in Boston.

The Court: Alright.

[fol. 214] Mr. Lipsitz: I have no further questions of this witness.

Cross examination.

By Mr. Crary:

Q. Dr. Silverman, you have testified that you were employed at the former University of Buffalo prior to September, 1962?

A. That is correct.

Q. You know that on that date some change took place in the ownership and maintenance of the University of Buffalo?

A. I do.

Q. You know what the change was?

A. Well, I have read the merger agreement several times, but I confess certain parts defeat my understanding. I do understand in general, yes. I don't mean to be facetious about it.

Q. Do you understand it then became a State institution?

A. Precisely that.

Q. Owned by and operated by the State of New York?

A. Yes.

Q. Now, did it occur to you that as a result of this the institution then became governed by all the provisions of State law?

A. Yes.

[fol. 215] Q. Which by their terms had application to it?

A. Yes.

Q. And specifically that employment by the University thereafter would be State employment and that it would be governed by State law?

A. Yes.

Q. Now, you have indicated that you have some responsibility in the area of hiring library personnel. In discharge of those duties did you make any efforts to familiarize yourself with the requirements of State law relating to employment?

A. In a general sense I did, and at the time of the merger there were several meetings at the Dean's Council, as it is called, of which I am a member, and to which Mr. Poppey and I believe Mr. Price may have come to tell the Dean's Director, which I am a director, something of the difficulties. But on the whole, I think we, or at least I found Mr. Poppey and Dr. Anderson, the Vice President for Educational Affairs, so competent that I simply went

along with the formal procedures. In other words, the forms were not changed.

Q. You knew there was a Personnel Office?

A. Yes.

Q. And you knew that the function of that Personnel [fol. 216] Office was to assist you in fulfilling your personnel requirements?

A. Yes.

Q. You did work through that office?

A. I did.

Q. Now, you have spoken of the meeting at which Mr. Randall was present, where the question of the proper—not the legal, the proper, in your opinion—place to put librarians was discussed. You have indicated, I think, your opinion to which you got some sympathetic response from the administration of the University, that librarians ought to be in the educational unclassified classifications. Did anyone tell you that they had been placed in the unclassified service?

A. No.

Q. To your knowledge, are they in the unclassified service?

A. To my knowledge they are in this kind of gray area, neither classified nor unclassified, because Civil Service—

Q. Do you understand—

Mr. Lipsitz: Excuse me. I object to this, I think he should be able to finish the answer.

[fol. 217] The Court: Do you have any reason not to have the Doctor tell us about the status?

Mr. Crary: I apologize, your Honor.

The Court: Alright. Tell us about the gray area they now enjoy.

The Witness: Well, they are neither classified nor unclassified. I think the phrase is written on the thing, it doesn't say NS, which I believe means non-statutory. It is my understanding we are all members of the Civil Service, but I am unclassified as Professor of English.

Presumably, I ought to be classified as librarian, I am not, unless I'm in error.

By Mr. Crary:

Q. What connection do the initials NS have with the unclassified or classified service, do you know?

A. I took it that NS was a temporary expedient until classification procedures and policies had been established.

Q. You speak of classification procedures, classification procedures by whom, Dr. Silverman?

[fol. 218] A. Presumably the Civil Service. They never come to do it.

Q. Do you understand that the Civil Service Department has no concern with the classification of the unclassified service?

A. That is right.

Q. They are only concerned with classifying those people in the classified service?

A. Yes.

The Court: What is that; what does that NS stand for?

Mr. Crary: Your Honor, this is a budgetary symbol.

The Court: I thought it meant no status.

Mr. Crary: It appears in the Appropriation Act, it means non-statutory. It means that particular position does not have a salary which is fixed by some statutory provision. With respect to the classified service, it means the position has not yet been allocated to a salary grade. That is all it means.

The Court: If it is neither fish nor fowl, the position, what does the Civil Service have to do with it at all?

[fol. 219] Mr. Crary: Civil Service has to do with it because the position is subject to the jurisdiction of the Civil Service Commission by law.

The Court: Why? It isn't classified, it is nothing.

Mr. Crary: This position is not in the unclassified service. It is therefore in the classified service as a matter of law.

The Court: In other words, if something is not classified, then it is classified; where does that come from?

Mr. Crary: From Section 40 of the Civil Service Law. Section 40 says that all positions are in the competitive class unless by specific action of the Civil Service Commission they are placed in either the non-competitive or exempt. The statute says this.

The Court: Alright.

Mr. Crary: Your Honor has asked about this particular position, and again I can refer to the statutory provision. [fol. 220] The statute is Chapter 980, the so-called merger legislation, which was designed to take care of this very difficult problem of the incorporating as a body the existing staff of the University of Buffalo. This presented a difficult administrative problem. Because of the requirements of the State Civil Service Law special provisions had to be made for it. Those special provisions in terms were that all of the positions, other than those in the unclassified service, which has a statutory definition, were considered to be in the non-competitive class pending classification by the Civil Service Commission. This was to give some legal status in the employment of the State in accord with the Civil Service Law, because of the necessity of taking them over and continuing the operation of the University of Buffalo without interruption, and [fol. 221] that is what was done. This was all pending the opportunity for the classification division of the Civil Service Department to go in there—and Dr. Silverman has just testified about preparing a job description for this purpose—to go in there and find out exactly what the duties of these jobs were and where they ought to be put into the normal pattern of State Civil Service. This job has not been finished. It involves some twelve hundred positions. It has not been finished. True, the statute contemplated it should be done within a year, but it has not been possible to do it, it was too big a job.

In the meantime you had to keep the services and functions of the University going, you had to resort to such pro-

visions of the Civil Service Law as were available to you to enable positions to be filled. That is what was done. [fol. 222] Chapter 980 also specifically said that this non-competitive status, which is a recognized status under the Civil Service Law, applied only to those then working for the University of Buffalo on the date of the merger, and that it also says in specific terms that all new appointments, all vacancies in existing positions, should be filled thereafter in accordance with the Civil Service Law regulations. That is why Mr. Starbuck's position, whose appointment was after the merger, came to be filled. His appointment had to be done in compliance with the Civil Service Law. Because the position had not yet been classified by the Classification Division, they were not in a position to have established a competitive examination for it. They permitted it to be filled under Rule 64-3. It could not have been filled without some authority as that, it could not have [fol. 223] been filled at all.

The Court: What does CC mean?

Mr. Crary: Classification and compensation. There is a division of the Civil Service Department known as the Classification and Compensation Division. Its powers and duties are prescribed and spelled out by Article 3 of the Civil Service Law. Its function is to assign titles to positions according to their duties; to allocate those positions to statutorily prescribed salary periods. When this is done and the position is securely classified as competitive, they will be in a position to establish competitive examinations and fill it from eligible lists established by competitive examinations. When that is done the person who is so appointed will become a permanent appointee, once he has qualified as prescribed by law. Until that can be done, the only way the position can be filled, consistent with the [fol. 224] Civil Service Law of the State, is to get permission and certification from the Civil Service Department to fill it on this basis. It can't give this certification for longer than eighteen months. The only reason that it made this certification subject to a termination April 1st is be-

cause it was made pending investigation because of the failure to answer the question.

The Court: Let me ask you something. Supposing this were an unclassified position and somebody out there—I'll just use Dr. Silverman for illustration purely—wouldn't sign Question 7?

Mr. Crary: If this were an unclassified position, your Honor, it would not come under the jurisdiction of the Civil Service Commission, this particular form would not have been used, another form would have been used. We would then be in the area governed by the Feinberg Law specifically.

The Court: Yes, that is right. Who drew Number 7 up; [fol. 225] have you any idea how long that has been around?

Mr. Crary: This is the standard Civil Service Department of Audit and Control Form that has been in use. I can't say of my own knowledge how long. I know it has been used for some time, and that the question was formulated by the Department of Civil Service.

Mr. Tiffany: It is used in my office, that form.

The Court: That doesn't make it right, Mr. Tiffany.

Mr. Tiffany: No.

Mr. Crary: It is very similar to the question asked to all applicants for Federal Civil Service positions.

The Court: I can guarantee you it is not, because that word taught or advocated is not the form used in the Federal system.

Mr. Crary: I do know that the Federal Government makes this kind of inquiry, whether it's in the precise words—

The Court: I am off the mark. I wanted to find out, and [fol. 226] I recall now that it has been discussed before that the unclassified people are assigned something else.

Mr. Lipsitz: May I say one thing? Mr. Crary said that the reason that he was certified only to 4/1/64 is because of his failure to answer the question. I think that the certification was given well in advance of the time he was asked to answer the question. So I don't think I understand that at all.

Mr. Crary: If the Court please, the certification consists of the Civil Service endorsement on that form upon which he refused to answer the question.

The Court: That apparently was in November when Simmons—

Mr. Lipsitz: In other words, he was employed for several months without being asked to sign anything.

The Court: Well, I suppose somebody has got to go around checking it. Let's finish up with Dr. Silverman, if you please.

[fol. 227] **By Mr. Crary:**

Q. Dr. Silverman, you said at one time in your testimony that you sent this matter through for approval of Albany?

A. I didn't say it precisely that way. I said that I consulted with Mr. Poppey who, I assume, got approval from Albany.

Q. You used the phrase "approval of Albany"?

A. Yes.

Q. Now, can we assume that indicates you knew that it required some approval?

A. Yes. I think in justice to me you must see that I do understand that there was a new way of employing people since the merger. I followed that procedure in seeking Mr. Poppey's advice and approval, using him as the conduit to whatever authority was beyond him.

Q. When you say Albany, what did Albany mean to you?

A. Albany meant Mr. Randall, I believe.

Q. Did you understand that it required the approval of the Civil Service Department?

A. I suppose I may have made that inference without having it come directly to the surface of my mind.

A. Are you saying you didn't know whether it did or did not?

[fol. 228] **A.** Since the classification procedure has never taken place I didn't know whether—I confess I'm in doubt as to whether these people have civil service classification

status. I do understand all of us unclassified come under Civil Service.

Q. You said you were anxious to have the position filled?

A. Yes.

Q. Did you make some representation to that effect to anyone, to Mr. Poppey?

A. To Mr. Poppey, yes.

Q. As a result did you request him to make every effort he could to get it filled immediately?

A. I did.

Q. Did you make any effort then to satisfy yourself as to what he had to do with getting the position filled?

A. Mr. Poppey phoned me when he found the approval forthcoming from the proper person in Albany.

Q. Did you make an effort to satisfy yourself as to what the nature of that approval was?

A. Only as Mr. Poppey gives it to me, and on the assumption that Mr. Poppey knows the procedures.

Q. You spoke of the normal twelve month period; what do you mean by the normal twelve month period of employment [fol. 229] ment?

A. As an academic person, teaching only, we speak of a ten month term. As a librarian, in the administration, generally we speak of a twelve month appointment.

Q. You were simply referring to the length of the academic year?

A. The distinction between the teaching and the administrative. The librarians come in under the administrative, those are twelve month appointments. They are paid twenty-six times a year, opposed to the faculty, I believe, who is paid twenty-one times a year.

Q. By the normal twelve months you meant he was not being paid on the ten month academic year but on the twelve month non-academic?

A. That is right. If I may extend this remark, I suppose I assumed that he would come under the July 1 to July 1 procedure, which is the librarian's twelve months.

Q. You testified from a budget, may I have that?

A. I think it was put in evidence.

Q. You have referred to Plaintiff's Exhibit P-10 as a budget; where was this prepared, Dr. Silverman?

A. I suppose it was prepared in Mr. Poppey's office with [fol. 230] the assistance of Vice President Anderson, and then I suppose it was approved by the Bureau of Budgets and Audit Control in Albany. The preliminary work was done by me. This isn't my work, it would not be official.

Q. Do you know where the money comes from to pay the salaries of the employees of the State University of New York at Buffalo?

A. I do.

Q. Where does it come from?

A. Appropriations from the Legislature.

Q. This is not an appropriation, is it?

A. No, sir.

Q. It is the request for an appropriation, isn't it, an estimate of need?

A. Not in my understanding. This I believe is—I believe my preliminary working papers would be the request, I believe this is—

Q. It bears on its title "Budget Proposal for Fiscal Year '64-'65," that is what it says?

A. Yes.

Q. Can we assume this is the request which is made for funds by the University at Buffalo?

A. I suppose so, but I receive this from the appropriate office as my working papers for the coming year.

[fol. 231] Q. Now, do you know whether or not all of these '64-'65 request items were actually appropriated by the State Legislature?

A. Not to my knowledge, but on my assumption.

Q. Do you understand that if and when the State Legislature enacts on budget requests it will put the names of the incumbents of particular positions in the Appropriation Act?

A. I should assume not.

Q. Have you ever seen it in the Appropriation Act?

A. No.

Q. You assume it would not. Of course, the Appropriation Act is a statutory provision which your Honor will take judicial notice of?

The Court: Yes, I will.

Mr. Crary: I think those are all the questions I have for Dr. Silverman.

By Mr. Lipsitz:

Q. Dr. Silverman, of the approximately eighteen or twenty persons you have recommended for hiring in professional positions since the acquisition, have any of them received any document constituting an agreement to employ them for a particular period of time, signed by you or any [fol. 232] body in the State organization?

A. Not to my knowledge.

Q. Would you know if people received those things?

A. The Pentagon form with the approval is returned to me, the sixth copy, I believe. Perhaps the seventh, this copy that goes into our personnel files.

Q. That constitutes the only document evidencing the arrangement for the employment?

A. In my office.

Q. Yes. Now then, starting with September 1962, a period of some nineteen months ago, you have hired or recommended for hiring eighteen to twenty people in a professional capacity in the library, is that correct?

A. Approximately that.

Q. And as far as you know the only thing evidencing their employment arrangement, that you are aware of, is the Pentagon form?

A. That is all there is in my office, as far as I know.

Mr. Lipsitz: That is all.

The Court: Nice to see you again, Doctor.

We will take a short recess.

(Thereupon a recess was taken at 11:20 a.m.)

[fol. 233] (Proceedings resumed, pursuant to recess, commencing at 11:45 a.m.)

Mr. Lipsitz: Mr. Starbuck is our last witness.

GEORGE E. STARBUCK, called as a witness in his own behalf, and being first duly sworn, testified as follows:

Mr. Lipsitz: Before he testifies there is another exhibit, by stipulation, I am going to be able to offer.

The Court: Let me see that so-called Pentagon.

(Thereupon Plaintiff's Exhibit P-13 was received and marked in evidence by stipulation.)

The Court: Let me ask you something, if you will, Mr. Lipsitz. This is sent to the Chancellor of the University recommending the appointment of the applicant. There is some place for an acceptance on here. How does the man [fol. 234] know, when does he get a copy of this?

Mr. Lipsitz: The employee?

The Court: Yes.

Mr. Lipsitz: He gets nothing.

The Court: Do you know about that, Mr. Crary? This is directed to the Chancellor, and I understand it has been in effect for a long time before the merger, and then there must be some action on that, I suppose?

Mr. Crary: I confess to my unfamiliarity with that form. I think the testimony is it is an internal form at the University of Buffalo. I cannot, of my own knowledge, tell you much about that form.

Mr. Lipsitz: I think the testimony is in the record through Dr. Silverman.

The Court: I just don't remember.

Mr. Lipsitz: He said this, in its number of forms prepared, goes to Mr. Poppey's office and one comes back to him for the files of the employee. That is where he got it,

(Thereupon a recess was taken at 11:30 a.m.)

where it comes from, that is the policy. The next thing [fol. 235] he knows is the man is receiving a salary.

The Court: Mr. Crary, what bothers me about this; this is September 23rd, apparently the date this was forwarded by Dr. Silverman or something was done with it. Then we wait until 28 October, 1963, more than a month later, then they make out this form 75. Well, of course, I must be candid with you, the thing that bothers me about Mr. Starbuck is that he did not know about this 75 or anything else. Apparently someone said to him, "You are on the way," apparently, he probably got a paycheck between the—at least he earned his money—

Mr. Crary: He couldn't have gotten a paycheck until the 75 form went in. That is part of the procedure for getting him on the payroll.

The Court: What I am trying to say is that the whole spirit, as I understand it, of the Court's desire to avoid [fol. 236] summarily dropping a man because he won't sign some type of loyalty oath—back in the McCarthy days, the minute you had any question about whether you had a leaning, you were finished. I don't know how it is now. That is what bothers me. I am looking at this in the broad view of a decent man here, who starts to work, an able fellow, and he has principles why he does not want to sign that thing. What there might be I don't know, and I don't care, because that is not my problem. The question I have is, shouldn't he have a chance, regardless of status, to at least go before a proper board and give his reasons.

You may say, "Technically, no, because he does not fit the mark, he is not unclassified, he is in a limbo somewhere, he hasn't met the conditions precedent of answering this at all." I know all that, but the public image that Mr. [fol. 237] Starbuck has, and it may not bother me at all, but it might bother a big section of the community. He starts out in a responsible job, he is without any knowledge of this thing; and a month or more than a month later he is met with this form and they say, "You've got to sign that." He declines for reasons known to himself, and then the

rug is pulled out because you haven't met the condition precedent. Whether you and I care about Question 7, the public reaction we know, at least it used to be and I think there is some of it left. That is what I see in the spirit of these cases in the Supreme Court, straining sometimes to give a person that chance to clear the air about his life and character.

Mr. Crary: The cases certainly, your Honor, give to a man as a matter of constitutional right—I think that's what we are concerned with, a civil right, a man who has [fol. 238] been deprived of his employment or any of any status because he is alleged to be subversive, the right to come in and explain either that he was not a knowing participant in the unlawful matter, which has been held to be unlawful by the Supreme Court. A man who refuses, and since he has refused deliberately and has been requested to explain why, the State law requires that we would say it is a wilful refusal to give information to enable the making of a determination. Let me further point out that this is not a disclaimer or loyalty oath, the failure to file which itself causes his dismissal by virtue of the statute or the rule or which imputes to him any unlawful subversive connection. This is an inquiry looking for information to enable a constitutionally constituted state body to make an inquiry which it is duty bound by law to [fol. 239] make. He is wilfully refusing to cooperate with them, give them the information. If he gives them the information, this does not become public, this is not published by the Commission, and it does not result in and of itself of an administrative determination, but it leads to an investigation of a matter, which counsel has agreed the statute under which they are making the investigation is constitutionally valid, and well he might because the Supreme Court so held.

The Court: You said that my inquiry before, that the words "taught or advocated" you interpreted that to mean teach and advocate. Now, I am not so sure of that. There is a lot of people in the community that don't want to talk

about it, don't want to have people hear this stuff. We have had a fellow barred out there by a court from coming [fol. 240] and letting the people hear what he has to say, evaluating it as—

Mr. Crary: If the Court please, I was the counsel in that case. It is on appeal to the Court of Appeals. I intend to defend the rights of the students to invite that speaker to speak at the University of Buffalo just as vigorously as I am now defending here.

The Court: However, there are people in the community who don't want students to even hear there is such a thing, it is a dirty work, Communism.

Mr. Crary: I would point out that in the law of the State of New York enacted recently is a requirement that Communism be taught about in the public schools, the students be taught about it, so that clearly we are not construing Section 105 of the Civil Service Law—

The Court: That wasn't in effect a few months ago.

Mr. Crary: That was enacted, certainly not this session, either the last one or the one before. It is now a part of the curriculum.

The Court: The whole thing is this, I can conceive very nicely of the most loyal American teaching all kinds of ideologies, discussing it with their student body, because I am convinced that such a student body if they have loyalty, cements that loyalty by hearing the pros and cons and making up its own mind as to where the virtue lies.

Mr. Crary: That is not what the question asked.

The Court: Question 7 would give me trouble. I don't think that it means teach and advocate necessarily. They have chosen the words "taught or advocate", and as I said before, there is a big section of the population, or there was one, that don't want to hear that word or any of the teachings taught to their little fellows.

Mr. Crary: I think in the cases in which this kind of [fol. 242] question has been involved have pointed out that where the words "advise, teach or advocate" are used in context, and not pulled out and considered by themselves,

but in the context of the unlawful overthrow of the government by force and violence, that those words then ask a question which may properly be asked as a qualification.

The Court: Alright, assume you are right. Here is a man whose major is poetry and the art of rhyming, a major in English. He reads that thing and if he is acute he sees "taught"; and maybe he sometimes has taught something along the lines "that is what they did in this country," or another, "here is the good of it all, here is my view of the evil of it all."

Now, what he is saying, he said, "I prefer not to answer, not finally, at least until the necessity and the relevancy of this question is properly explained to me." Now, to me, [fol. 243] my reaction is that he hasn't signed it, he doesn't say, "I will not sign." I should think that would be the typical hearing situation.

Mr. Crary: I think we have testimony in the case that there was an effort to explain to him the relevancy of the question, namely, 105 of the Civil Service Law.

The Court: That doesn't mean much; that is like handing him the statute and saying, "Read that and then you will understand."

Mr. Crary: Here is an explanation by a constituted public body, sworn to uphold the Constitution and laws of the State of New York; that we must ask you this question because it is our duty to establish this qualification.

The Court: You haven't got a no or yes, you have something that to me means that man has a point, "I want to hear why this is necessary."

Mr. Crary: I think the statement itself—I may be wrong [fol. 244] —I think it says, "You may accompany your answer with any further explanation." Let's assume that Mr. Starbuck had said, "Well, I am not sure whether I can answer this question yes or no, I would like to accompany it with this explanation." He could explain that at some point in his career he explained Communism, Marxism, subversion or subversive doctrines to a class, and for this reason he was not sure. This explanation would then have

been taken under consideration by the Civil Service Department and that answer would not have itself lost him his employment. It would have led perhaps, to further investigation, perhaps to a determination on the face of it that he was not disqualified under 105. The only thing that disqualifies under 105 is a knowing, unlawful participation in advocating, teaching that the Government should be [fol. 245] overthrown by force or violence. 105 clearly means that no more—

The Court: Give me that 105, will you?

Mr. Lipsitz: He talks about offering explanations; there is nothing on the form about offering explanations.

The Court: There isn't anything here I see, unless it is in some catch-all somewhere.

Mr. Lipsitz: He also insists this is a sworn, constitutional duty of some kind of somebody to ask these questions. Nothing in the law says that. The law states that a person who is ineligible by virtue of having participated in the activities the Legislature says are improper may not be employed. We do not quarrel with that law.

The Court: What he said was that in order to find out whether such a person has done so, we are entitled to a few answers to evaluate.

Mr. Lipsitz: That is correct, we don't attack that in this [fol. 246] proceeding. The question, however, is more than just a simple question of do they have the right to ask that question, because I have explained to your Honor, and as I think the evidence we have introduced will show, the law requires that all employees be subjected to Feinberg Law procedure, and the Board of Regents said that about all employees of the institutions of higher learning, and the Feinberg Law procedure does not have this involved difficulty to understand, sometimes difficult to answer questions. It has a simple statement, "I am not now a member of the Communist Party, and if I was, I conveyed that fact to the President."

The Court: Let me ask you; here is a man, a man with a fine academic background, at least as far as the record is

concerned, who entered into this employment in good faith with Dr. Silverman, and a month later he is met by Form [fol. 247] 75, which to him for many reasons, for some reason, is offensive to answer Question 7. Now, we also know that his job is kind of in the limbo presently. It is classified because it hasn't reached the unclassified status. There has been indication the University may go along with that. He doesn't say, "I refuse to answer that," he says, "until I know more about it." As a practical thing, why doesn't the State give him a hearing? Now, instead of taking two days and splitting hairs over what the cases have said, why don't they say—I can see we wouldn't want to set a precedent—I don't see how you set a precedent over a man in a status which one of these days that status is going to be finalized. It seems to me it is equitable, with no precedent established, to say, "Look, Starbuck certainly came in and has been employed as far as we know without [fol. 248] knowing of this obligation; Dr. Silverman, he never mentioned it to him." Dr. Silverman is basically an English teacher, not an administrator. You can see that by what he knows about the budget. He has Poppey, he should be able to rely upon Poppey, not himself. He is not a business man. It seems to me under all the circumstances in this case that the State would not lose one bit of its solemn obligation by giving a hearing. If you don't want to answer that, you don't have to. I am talking now more about the equities than I am the law.

Mr. Crary: If the Court pleases, let me try to answer that the best I can by pointing out that attached to the Plaintiff's moving papers, Exhibit 3A, there is a letter addressed to Mr. Starbuck by Harry Poppey, based on instructions which Mr. Poppey received from the Civil Service [fol. 249] vice Department.

The Court: That is in the petition?

Mr. Crary: Attached to the moving papers on the application for a preliminary injunction. I must again point out that I have made the objection here that the Civil Service Commission is not a party. We are carrying

out a directive of the Civil Service Commission in this letter.

The Court: I am not criticizing anybody in the State for taking a position. I say that this case, just like Mr. Starbuck's position, is not to me black and white, but gray. If it were gray to me, I wouldn't feel that I have lost any of the dignity of the State by granting him a hearing, because it is not one of those things that hits in notch A or B to me.

Mr. Crary: In this letter, your Honor, the Civil Service Department wrote to the State University. In effect it said to us, "He hasn't answered this question, you have got to get him to answer it, what you should do [fol. 250] is advise him to answer yes or no, and if the answer is yes an explanation in detail is requested."

The Court: That may be pretty hard to do.

Mr. Crary: He was given a full opportunity to attach whatever explanation he wanted.

The Court: I don't know what his philosophy about it is. It may not be the kind of thing that is readily yieldable, readily fitted into a written communication, I don't know. It is not my business to know. How simple it would be, in the light of the fuzziness of Starbuck's status, and the whole University starting, getting under way here, to grant him a hearing and say, "Now, what is your problem?"

Mr. Crary: Your Honor, if I may answer that to the best of my ability; this is a procedure which has been followed by the Civil Service Department as long as the statute has been in existence. To do what your Honor [fol. 251] suggests would be, in effect, to hold that he has a constitutional right to that kind of a hearing.

The Court: You are worrying about the precedent, I say there won't be any. One of these days you are going to have the University on its feet, on all fours, it won't happen again, so that Starbuck will be one color or another. When he is hired, seventy-five will be made out that day, undoubtedly. You know what happened, this

diddling along out here, seventy-five follows up. Some day they are going to be eye to eye and Starbuck won't get off the ground.

Mr. Crary: There is a specific—

The Court: I don't mean Starbuck, all people will have this thing checked out before they get underway at all. This did not happen here.

Mr. Crary: I say to your Honor that Mr. Starbuck is welcome to make any explanation he wishes to the Civil [fol. 252] Service Commission. He was invited to do so.

The Court: Was there a hearing?

Mr. Crary: This is not a hearing in the due process, Fourteenth Amendment sense of the hearing, no, but I cannot, representing the State University in seeking to carry out a directive of the State Civil Service Department, and in the absence of the Civil Service Department as a party to this proceeding, consent to give him a hearing before the Civil Service Department. Nor do I think the Civil Service Department itself could consent to this in the absence of any provision in the statutes of the State for it, and when there is a specific protection to that person who in the course of this investigation is found ineligible to the full rights of hearing on any elements which properly interferes in that decision of ineligibility.

The Court: Well, you see my thinking. I know you have a lot of rules and regulations. In private life some- [fol. 253] times we cut through some of them and think we do good by it.

Mr. Crary: I do appreciate your Honor's thinking and for that reason I would just like to extend this discussion a moment. Take the case of the competitive class employee, who has to qualify to get permanent employment within the meaning of the statute. He can only do this through having been certified as having successfully passed a competitive examination. To take that examination he has to make an application. The application contains this exact question. He never gets to take the

examination until he satisfactorily establishes his qualifications to be examined. This form is the examination which is utilized to fill the position because at the moment it cannot be filled by competitive procedure.

The Court: I understand that.

Mr. Crary: This is the application for a position, it [fol. 254] says so.

The Court: I understand that. If that form 75 had been executed before Mr. Starbuck took off in his job, before he became settled and the community began to know him as a librarian out there, I think he would have nothing. The thing that bothers me, in the philosophy of the case law, is that here is a man who if he is dropped out because of his failure to answer Question No. 7 results in a stigma in the neighborhood, at least in some people's minds. I would like to, if I could accomplish it, give him a chance to go before an organization that is set up to hear, give him a hearing as to why. Then if they give him a hearing and they don't like what they hear, he is finished.

Mr. Crary: He was already invited to explain. Had he explained and his explanation been satisfactory, he would not be dropped. If his explanation was not satisfactory, [fol. 255] and he was held ineligible, he has the fullest kind of a hearing that the law allows.

The Court: The law distinguishes that explanation, as you put it, and the hearing, because if the law contemplated that an explanation was enough they would not have provisions for a hearing.

Mr. Crary: This is an inquiry, an investigation by an administrative body; it is not a judicial hearing, true. It is an inquiry. He refuses to cooperate, it is as simple as that. I think we can cite to you cases which very clearly hold that where that kind of an obstruction to a legitimate inquiry is interposed by an applicant for a position or an employee, he may be dismissed on that ground; not because he is a subversive, but because he refuses to cooperate in a lawful inquiry. That the inquiry is lawful is conceded.

Mr. Lipsitz: In Askor vs. Little the court said—which [fol. 256] required the signing of a particular oath—"the man cannot be discharged unless he has a hearing first."

Mr. Crary: The statute does not require a disclaimer.

Mr. Lipsitz: That is right, they insist they have a right to discharge him without a hearing.

The Court: Again, I don't want to take this time. If somebody had the power to give this hearing—and I am not criticizing you, I know how tight these things are, you don't deal with the State of New York like you deal with some corporate entity where the president says, "We will go along in an effort to get this thing resolved." I know that, but I thought I would throw it out, it would solve many things.

Mr. Crary: I hope your Honor understands my position with the Civil Service Commission, which I don't represent, which is not a party to the case, so that I am not in [fol. 257] a position—I am greatly concerned, your Honor, I don't want to conceal it from the Court, I want to be honest about it, I am greatly concerned about what happens tomorrow, which is April 1st, when the Comptroller of the State of New York, who also is not a party to the case, will refuse to issue any more paychecks without action on our part.

The Court: I have thought of that before. I have run into comptrollers before. I know that is true, that is not my problem. I am trying to conclude this hearing, and I am trying to give it the best effort I have. We will have to discuss tomorrow after we finish with the evidence.

Mr. Lipsitz: Shall I proceed?

The Court: Yes.

Direct examination.

By Mr. Lipsitz:

Q. Mr. Starbuck, you are presently employed at the State University of New York at Buffalo in the library, is [fol. 258] that correct?

A. Yes.

Q. And during the month of February, 1964—I am leading, I want to shorten this up—you were advised that unless you answered Question 7 on that form that procedures would be taken to terminate your employment?

A. Yes.

Q. At which point this proceeding was instituted to attempt to restrain that separation?

A. Yes.

Q. Going back to the time that you were considering coming here to work; did you make any other inquiries from other employers as to the availability of work at or about the same time that you inquired from Dr. Silverman?

A. Yes, I was writing from Rome to people in New York City and elsewhere.

Q. What time did you return to the United States from Rome?

A. September 13th I think we got into New York.

Q. At that time, or at least at or about the time, before you had your conversation with Dr. Silverman, did you receive any other offers of employment?

A. Yes.

[fol. 259] Q. Can you recall the offers?

A. Just the week before I finally decided to take the University of Buffalo job I was offered a job at Random House, in the editorial trade, editorial department in New York.

Q. In what capacity?

A. As an editor.

Q. At what salary?

A. \$7500.

Q. Did you receive any other offers of employment?

A. There was some. I was interviewed about other jobs, there was offers. It never got as far as discussing salary; Harper and Roe, another publisher.

Q. Did there come a time in September when you came to Buffalo and discussed employment with Dr. Silverman?

A. That is correct.

Q. You heard him testify as to the conversation?

A. Yes.

Q. That he had with you, the conversation he had with you?

A. Yes.

Q. Did he substantially state the agreement that he offered to extend to you for employment?

A. Yes. There were a few minor things mentioned but—

Q. Tell us what else was said that you recall that he [fol. 260] did not testify about?

A. Well—

Q. In terms of the employment that he offered?

A. Well, I spoke with him at the time about the possibility of taking an extra course later on to teach in the University, and we agreed that that was alright, that would be possible.

Q. There was no offering you of employment other than in the library?

A. No, it was a library job. There were a few things I had to know, I had to bring my familiarity up.

Q. Were you told as to how long you could expect to be employed?

A. Well, we were talking about a year's contract. I know I did say I wanted to be sure it would be that before I came up. He said, "I presume—" I couldn't quote his words—he said, as a general manner, "I presume we will get along, this will continue from year to year." Indeed, we spoke in general terms about possibilities later for advancement.

Q. Now, other than his interview with you, during which this offer was made and your agreement to accept it, was anything told you about any other requirements to become employed here at the library at the University?

[fol. 261] A. No.

Q. Alright, did you move your family to Buffalo?

A. Yes.

[fol. 258] that correct?

Q. Consisting of what, a wife and—

A. A wife and child.

Q. Did there come a time that you commenced performing your duties at the library?

A. The first of October.

Q. And do you know when it was that you were first paid?

A. There is a normal delay, it seems to me it was about six weeks. I can't remember exactly, but I could look back and find out.

Q. When you were paid, were you finally paid for all your term of employment?

A. Yes.

Q. Did there come a time at the end of October, or whenever it was, that you were confronted with Question 7, Form P-75?

A. Yes.

Q. When was the first time you were confronted with that?

A. I don't remember. It was after I started to work. I was called over there and given forms.

[fol. 262] Q. Place it in, as nearly as you can, the month of October?

A. As I remember, it was several weeks after I started to work.

Q. Is that the first time that you learned about any such requirement?

A. Yes.

Q. Did anybody talk to you about taking an examination before that?

A. No, nor at that time I never heard of the examination thing until after this affidavit of Mr. Randall's.

Q. When you were given that form, I take it that you came to Question 7, you placed a notation on it that appears on the document that has been submitted with Mr. Randall's affidavit?

A. Yes.

Q. Now, had you been advised before that time that you would have to answer that question in that form would you have taken the employment at the University?

A. No.

Q. Were you in the United States Armed Forces during the Korean war?

A. Yes.

Q. Were you honorably discharged?

A. Yes.

[fol. 263] Q. Where was the last place that you voted before 1963?

A. Massachusetts, Boston.

Q. Is that the state from which you left to go abroad?

A. That is right.

Q. Mr. Starbuck, if your employment at the University ceased what other source of income will you have at that time?

A. Well, I might have my lectureship in Millard Fillmore, which would last through June.

Q. That is at the rate of \$400 for the term?

A. Yes, of which I have received \$200. I will receive an increment of \$200.

Q. What other source of income?

A. Royalties from publications.

Q. What do they amount to?

A. A little under \$200 last year.

Q. Poetry isn't sold that widely, is that it?

A. I might make a killing, but—

Mr. Lipsitz: I have no further questions.

Cross examination.

By Mr. Crary:

Q. Mr. Starbuck, when you came to work at the State University of New York at Buffalo, did you know this was employment by the State of New York?

A. Yes, I did, by the time I started to work. I had [fol. 264] addressed my first letter to the University of Buffalo, then Dr. Silverman told me about the merger.

Q. Attached to your moving papers in this matter is Exhibit P-3A, a copy of a letter bearing the date December 13th, purporting to be addressed to you and signed Harry W. Poppey; did you receive that letter?

A. It seems to me I received it. Yes, this is a copy of the letter I received. Exhibit 4 is my reply.

Q. Now, in response to that letter, which says that you should be advised to answer this Question 7 either yes or no, and if the answer is yes an explanation in detail is—

A. Would you read the letter in its own language, please?

Q. You may read it yourself.

A. Well, you were paraphrasing it.

Q. "Dear Mr. Starbuck: Because you did not answer Question 7 on the back of Form PR-75, the Department of Civil Service has written to the State University Central Administration as follows: 'You should be advised to answer this question either yes or no. If the answer is yes, an explanation in detail is requested.'" I will not read the rest of it unless you wish me to. I would ask you, did [fol. 265] you answer the question yes or no?

A. No, I did not. May I—

Q. I asked you did you answer it and since you did not answer it either yes or no, you did not submit any explanation in detail as requested in this letter?

A. I was only requested for an explanation if I answered yes.

Q. You did not submit any explanation in detail as requested in this letter, yes or no?

A. I did not answer yes or no. I sent a letter.

Q. Please, yes or no, did you submit an explanation in detail?

A. I submitted some explanations in my letter in response.

Q. But not an affirmative answer to the question?

A. No.

Q. One other question—may I have that PR-75 form? If your Honor please, your Honor has the exhibit I am looking for. I would like to base my last question on the PR-75. Mr. Starbuck, this copy of the PR-75 form, which has been put in evidence, as a copy of a form which purports to bear your signature. You did sign that form, did you not?

A. Yes, sir.

Q. And you did say in answer to the question, "How long have you continuously been a legal resident of New York [fol. 266] State"; "One month"?

A. Yes.

Q. You did put the figure one in answer to that question?

A. Yes.

Mr. Crary: That is all, your Honor.

The Court: Let me ask you a question, Mr. Starbuck. I want you to think about it, I don't want you to answer it at all because I am not trying to pry any answer out of you as to Number 7. And if you have any question at all about answering me, and therefore about answering Number 7, against your scruples, whatever they may be, all you have to do is say so.

In your letter, Exhibit 4, the third paragraph on page one you say: "I can't by that very reason submit without question or protest to a procedure which seems on the face of it designed to put prior restraint in a way susceptible to stressing general interpretation and application upon that free interchange and competition of ideas which any university should and any American university [fol. 267] must promote and defend."

You have heard me talking about that question before, teach or advocate. In your analysis of that question have you read it with a view of either answering it or not; did you take that teach to be, in other words, if a person taught the ideology so there would be a free interchange

of ideas, did you feel that might be something that was a taboo in Question 7? Don't answer me if you don't want to. What I am trying to say, when you read that the first time—it seems to me that to teach or advocate are two different things, and I wanted to know whether there was reluctance on your part to answer that question perhaps because you had a similar interpretation of it. If you don't want to answer that at all, say so. I absolutely defend your right to not answer that in this courtroom if you do [fol. 268] not please. Would you rather not?

The Witness: Well—

The Court: I am only interested in whether your reaction was that teaching or comparing it to other ideologies might be contrary to the State policies?

The Witness: In that respect, that word and certain other words in there seemed—well, I don't know whether we want to get into the question—it seemed to be susceptible to interpretation. My understanding of recent American history, these things have been used under interpretations which might raise a constitutional question, which might be used in restraint of discussion which had nothing to do with this specific subversion. I have represented in the explanation that I think these are questions that are, to someone who's never seen this before and hadn't lived under the laws of the State of New York and didn't know anything of the background of this thing, [fol. 269] just these words on the page, that seemed important, puzzling and possibly distressing. I could not be sure how they were to be interpreted, what the legislative history of this might be.

The Court: Well, as I understand what you are saying, you would have difficulty, having made a minute analysis of the question, in answering it yes or no with all complete honesty and frankness because you say, in your opinion, some of the wordings might involve interpretations, subsequently if you learned of that interpretation, you would have made another answer. You did not read

the common ordinary thought into that question? You went into it more in detail in making your own analysis of whether you could answer it or not?

The Witness: Yes. I did not—it was not an occasion where I could even do that. At the time I did think [fol. 270] the history of things which had been done in communities in this country from time to time under the banner of anti-subversive action, and things which have often later been repudiated in the courts, and disavowed by the American people, and I knew many questions like this had been enacted into law, some of them after a good deal of debate, some have been upheld, some not been. I feel that with the fact that it is on the form, it has this effect, an inquiry about it is enough to cause some summary dismissal, and indicates it is considered to be important. Certainly, this is an important issue in American life. I hesitate to go on here, we are talking about procedure.

The Court: I understand that. What I wanted to know was, you did not just take that as a question, were you a member or not of some subversive organization. Your analysis was a much more refined one, as I view it, where [fol. 271] in you went back to history in the country and other developments?

The Witness: Yes, sir.

The Court: You did not just take this as a yes or no to are you or were you ever a member sort of thing?

The Witness: No, sir. For all I know, among other things, I find later that there is a list of two organizations in the State of New York, and I know other such formulas turned out to refer to lists of thousands of organizations. May I say, I have been accused, it has been suggested I am being uncooperative in—have been uncooperative in furthering the investigation into my competency and reliability as a librarian, as a teacher, as a purchasing officer. I would hesitate to testify to my own competency in any of these positions if I put my name to something without examining it.

The Court: Any more questions?

Mr. Lipsitz: None.

[fol. 272] Mr. Crary: None.

Mr. Lipsitz: We have no more testimony.

The Court: Thank you, that is all, Mr. Starbuck. That is the end of the evidence in the case?

Mr. Crary: If the Court please, Mr. Randall is here, and the only thing that I would want to put him on the stand for would be to introduce some letters, correspondence, from the Civil Service Department which have a bearing on the question of the Civil Service determination as to the classification or unclassified character of the librarian position. I would be willing, if counsel is agreeable, after examining them, to put them in evidence without putting Mr. Randall on the stand for a lengthy examination. I would be willing that counsel should make whatever cross examination he pleases.

Mr. Lipsitz: Let me look at the letters.

Mr. Crary: The letters are copies, they are not originals.

[fol. 273] Mr. Lipsitz: I have another supplemental memorandum for you and Mr. Crary.

Mr. Crary: If the Court please, I would like to also make clear on the record at this point, in offering testimony on behalf of the defendants, I, before doing so, renew our motions to dismiss on all the grounds stated.

The Court: Yes.

Mr. Lipsitz: I have no objection to these being offered, as far as their authenticity is concerned. I don't know about the contents to argue about their pertinency.

Mr. Crary: If the Court please, Mr. Randall prepared an affidavit which is here, he is available for any questions which the Court might wish to address to him or that counsel might wish to put by way of cross examination. Barring that, I see no need of putting him on the stand.

The Court: I don't have any questions that I haven't asked you. I guess you know all the answers that Mr.

[fol. 274] Randall would, particularly those matters I asked you about, the various statutes.

Mr. Crary: He could verify the procedures that I have given your Honor.

The Court: Let's assume if he hasn't corrected you, what you said is right.

Gentlemen, that is the end of the proof here. I want to sit down with you and talk over the next move. I have been handed a supplemental brief here, which I suppose you just got a copy of. Have you given me the State's brief?

Mr. Crary: I haven't. As soon as we get back to Albany we will complete the one we have in preparation.

The Court: Let's go into chambers and talk about the time element, and so forth. We will recess at this time.

Mr. Tiffany: The Board of Regents makes a motion to dismiss.

(Thereupon the court was in recess.)

[fol. 275]

PLAINTIFF'S EXHIBIT 1

(Letterhead of State University of New York at Buffalo,
Buffalo 14, New York)

February 4, 1964

MEMORANDUM

TO: Dr. Thomas E. Connolly

FROM: Jeannette F. Martin

With reference to our telephone conversation of today, I am enclosing a list of the Faculty Without Rank or Tenure and an excerpt from the Ordinances and Charter Article XII, Section 3.

(2) enclosures

[fol. 276]

FROM

Ordinances and Charter of the University of Buffalo 1958

ARTICLE XII THE FACULTY

SECTION 3. The Faculty of the University shall consist of all persons who are members of the faculty of any of the Schools or Colleges or Divisions of the University. The Faculty of the University shall also include persons who are members of the professional staffs of the University libraries, of the offices of student personnel and health services, of research institutes, and of other units of the University which may be designated by the Chancellor and approved by the Committee on General Administration of the University, and who are recommended for appointment to the Faculty of the University by the Chancellor and approved by the Committee on General Administration. Persons so appointed shall be designated members of the Faculty of the University without rank or tenure as such.

October 21, 1963

**THE FACULTY OF THE STATE UNIVERSITY
OF NEW YORK AT BUFFALO**

(Without Rank or Tenure)

Dr. Dorothy B. Adema	—	Chief Counselor for Women
Mr. Hugh Craig Atkinson	—	Reference Librarian
Miss Ruth Bartholomew	—	Gift Exchange Librarian
Miss Mildred Blake	—	Assistant Director of Student Personnel
Mrs. Priscilla M. Bommer	—	Jr. Assistant Readers' Service
Miss Marilyn M. Boucher	—	Assistant Supervisor of Women's Housing
Miss Ida M. Cheplowitz	—	Science Librarian
Mrs. Virginia K. Church	—	Sr. Assistant Cataloger
Mrs. Nina T. Cohen	—	Acquisitions Librarian
Mr. James Connell	—	Assistant Supervisor of Men's Housing
Miss Helen Davidson	—	Subject Specialist in Book Selection
Mr. Milutin Devrnja	—	Sr. Assistant Catalog Librarian
Mr. Gene L. Dewey	—	Sr. Assistant Readers' Service
Mr. Edward F. Ellis	—	Subject Specialist in Book Selection
Mr. William B. Ernst, Jr.	—	Associate Director of Library
Mr. Robert M. German	—	Assistant Director of Placement Services
	<i>resigned</i>	
	<i>1/31/64</i>	
	<i>D. 1/15/64</i>	
*Mr. Roger W. Gratwick	—	Dean of Men

* By virtue of their office, they are members of the University Senate.

The Faculty of the State University of New York at Buffalo (Without Rank or Tenure) October 21, 1963

Miss Dorothy M. Haas	—	Director of Norton Hall
Miss Helen G. Haberman	—	Librarian—Subject Specialist
Mr. Thomas F. Haenle	—	Assistant Director of Norton Hall
Mr. Robert P. Haro	—	Subject Specialist—Acquisitions
Miss Miriam Hawkins	—	Librarian
Mr. John P. Herling	—	Asst. Director for Readers' Services
Mr. David B. Hershenson	—	Counselor—Student Personnel
Miss Ann Hicks	—	Assistant Coordinator of Stud. Activities
[fol. 278]		
Mr. Andrew W. Holt	—	Assistant to Dean of Millard Fill College
Miss Margaret Y. Johnston	—	Catalog Librarian
Miss Dorothy J. Keller	—	Supervisor of Women's Housing
Dr. Nicholas Kish, Jr.	—	Asst. Dean of Millard Fillmore College
Mr. C. James Lafkiotes	—	Director of Placement Student
Mrs. Aniela Lichtenstein	—	Cataloger, H.S. Library
Mrs. June Lih	—	Cataloger
Miss Roberta Lindo	—	Head Resident (Goodyear Hall East)—Women's Housing
Mrs. Alicia Livingstone	—	Subject Specialist—Book Selection
Patricia C. Lowenberg	—	Assistant Librarian, Lockwood Library
Helen H. Lyman	—	Librarian, Lockwood Library

The Faculty of the State University of New York at Buffalo (Without Rank or Tenure) October 21, 1963

Miss Ellen M. Mack	—	Sr. Assistant Readers' Services
Mr. Clark M. Maloney	—	Asst. Supervisor—Housing and Food
Miss Katherine L. Maloney	—	Assistant in Readers' Services
Miss Mary C. Mc Carthy	—	Circulation Librarian
Mr. Donald T. Mc Clain	—	Assistant Director of Housing
Mr. Theodore E. Miller	—	Counselor—Student Personnel Services
Mrs. Faith K. Moll	—	
Mrs. Joan B. Moos	—	Asst. to Dean of Students—Stud. Personnel
Mrs. Natalie Morton	—	Counselor—Stud. Personnel Services
Mr. Thomas B. Nickson	—	Asst. Dean of Millard Fillmore College
Mr. John Z. Okoniewski	—	Director of Housing and Food
Mrs. Charlotte F. Opler	—	Vocational Librarian—Stud. Pers. Services
Mr. Philip E. Pepper	—	Jr. Assistant of Readers' Services
Mrs. Esther A. Rogers	—	Engineering Librarian
Miss Anna Russell	—	Sr. Assistant in Poetry Collection
Miss Jacqueline Saab	—	Reference Librarian
[fol. 279]		
*Miss Jeannette Scudder	—	Dean of Women
Mr. William H. Siemering	—	Asst. Coordinator of Student Activities

* By virtue of their office, they are members of the University Senate.

The Faculty of the State University of New York at Buffalo (Without Rank or Tenure) October 21, 1963

Miss Dorothy K. Simon	—	Counselor—Student Personnel Services
Mr. Larry Smith	—	Assistant to Dean of Students
Mr. George E. Starbuck	—	Assistant in Acquisitions
Mrs. Ivah B. Sweeney	—	Asst. to Director and Order Librarian
Mr. George G. Thompson	—	Asst. to Dean of Millard Fillmore College
Miss Virginia B. Thweatt	—	Assistant Reference Librarian
Mr. Robert J. Watson	—	Sr. Assistant Readers' Services
Mr. John Warren	—	Coordinator of Scheduling
Mr. Richard I. Wilson	—	Assistant Coordinator of Stud. Activities
Miss Cindy E. Woodruff	—	Cataloger—Lockwood Memorial Library

Birth Date June 15, 1931

STATE UNIVERSITY OF NEW YORK AT BUFFALO
BUFFALO 14, NEW YORK

TO THE CHANCELLOR OF THE UNIVERSITY:

I recommend the appointment of

Mr. George Starbuck
Name George Starbuck Starbuck
xxxx xxxx

Address c/o New Yorker 25 W. 43 street New York 36, New York
as (title) Assistant in Acquisitions N.S.

Department Blackburn Memorial Library College, School or Division

Proposed salary (1) Annual \$ 6480 (2) If for term, amount for term, \$

(3) If part-time, at the rate of, \$: total amount needed \$

TERMS OF APPOINTMENT (Check one item in each column below):

- | | | |
|---|--|--|
| <input checked="" type="checkbox"/> Full-Time | <input type="checkbox"/> Academic Year | <input checked="" type="checkbox"/> New Employee |
| <input type="checkbox"/> Part-Time | <input checked="" type="checkbox"/> 12 Months Year | <input type="checkbox"/> Replacement of staff |
| <input type="checkbox"/> Part Salary | <input type="checkbox"/> Promotion | <input type="checkbox"/> Previously on staff |
| <input type="checkbox"/> Without Pay | <input type="checkbox"/> Reappointment | |

This appointment covers % of full-time appointment.

To become effective October 1, 1963, To expire continuing, 19

Budget item No. 14 14397 If a transfer of funds is required it should come from Item No.

Additional Information Mr. Starbuck replaces Mrs. Hallowitz, who is now working part-time.
The amount budgeted for this line is 6980; recommended salary for Mr. Starbuck is \$6480.

Signed O. G. Kilmer Agreed by lobby Sep 1963 Date September 23, 1963
(Dean or Director)

Approved by P. T. S. Authorization by Council Date

Date new Notification Letter sent Date Sey Chung

Deans, Directors, and others concerned are requested to fill out the form in six copies for all recommended staff changes and forward five copies to the Vice Chancellor for Educational Affairs, who, after appropriate investigation, will forward recommendation to the Chancellor. When approved, form No. 4 will be returned to the Dean (or Director) who originated the request.

*Insert appropriate wording:

- (1) the appointment of
- (2) the reappointment of
- (3) the promotion of
- (4) leave of absence for (state purpose)
- (5) change in salary for (be sure to show present salary and distribution as to Depts. or Funds)
- (6) acceptance of the resignation of
- (7) removal of name from payroll (state reason)
- (8) change in distribution of salary as to Depts. or Funds
- (9) change in title of

† Give this exactly as it should appear in notification letter, catalogs, and directory.

‡ Give name of predecessor Use the marked "Additional Information."

§ Give approximate date and state in what capacity. Use the marked "Additional Information."

(In the case of new appointments, two copies of the biographical data form should accompany the recommendation.)

OFFICIAL RECORD
U. S. DEPT. OF EDUCATION
H. T. NOEL
1963

Check One:
☒ Faculty
☐ Non Faculty
☐ U.B. Student

Department of Audit and Control
Department of Civil Service

Follow Detailed Instructions in
Making Entries on This Form

PAYROLL AND PERSONNEL
TRANSACTION FORM PR-75

[fol. 281]

PLAINTIFF'S EXHIBIT 3

194

FOR USE OF DEPARTMENT OF AUDIT & CONTROL ONLY									
01 GROSS & ANNUAL		34 RELEASE - TERMINATION		AGENCY CONTROL NUMBER					
01 GROSS		31 RELEASE - TRANSFER							
01 ANNUAL (38-47)		32 RELEASE - TEMPORARY							
01 GR. & ANN. X76 (NAME 11-25/48-62)		33 TITLE (GR 28-37/TITLE 48-62)							
49 LINE CHANGE (NEW 28-37)		5 SUMMARY							
35 NAME CHANGE (NEW 48-62)		5T SUMM. TRANSFER							
DEPT. DIVISION PAYROLL AGENCY		BUREAU							
1 37 State Univ. of New York at Buffalo		UNIVERSITY OF BUFFALO							
LINE NUMBER		MIDDLE NAME		LAST NAME					
2 19573		E		SANTWICK					
LINE NUMBER CHANGED TO		MIDDLE NAME		LAST NAME					
4									
GROSS SALARY (ADD)		(BASE SALARY)		(ADJUSTMENT)		10-MOS. SAL. X76 (COLS. 38-47)			
6		6480.00							
PREV. PERIOD GROSS SALARY (DEDUCT)		GRADE (COLS. 28-37)		TITLE (COLS. 48-62)					
7		6		60					
NAME OF STATE AGENCY WHERE LAST EMPLOYED (IF ANY)		DATE OF LAST CHECK							
9		10							
GEOGRAPHIC LOCATION		JURIS-DICTIONAL CLASS		EFFECTIVE DATE					
11		Buffalo, New York		10/1/63					
APPOINTMENT FROM LIST		SERIAL		DURATION					
13				14					
NOMINATION FOR APPOINTMENT - APPLICATION ON OTHER SIDE MUST BE COMPLETED IF RULES BELOW ARE USED.				14					
15				14					
RULE VIII - 4 - PROVISIONAL APPT OR PROM.				14					
16				14					
RULE VIII - 9 - EXCEPTIONAL APPOINTMENT				14					
17				14					
RULE VIII - 10 - APPT. WHERE EXAMINATION DOES NOT PROVIDE LIST				14					
18				14					
OTHER RULES: STATE RULE AND EXPLAIN IN REMARKS				14					
TRANSFER FROM (AGENCY)		STATUS CHANGE		REINSTATEMENT DEMOTION					
19		17							
REMARKS									
20									
SIGNATURE OF APPOINTING OFFICER		TITLE		DATE					
19									
THIS ITEM FOR CIVIL SERVICE USE AS REQUIRED		DISAPPROVED		DATE					
20									
APPROVED ON TRAINING AND/OR EXPERIENCE		WRITTEN		ORAL					
21									
pending instant.									
64-3 pend c & c action									
4-1-64									
CERTIFICATE VALID UNTIL		THIS CERTIFIES THAT THE ABOVE EMPLOYMENT IS IN ACCORDANCE WITH LAW AND RULES MADE IN PURSUANCE TO LAW, SUBJECT TO ANY LIMITATION OR CONDITION SPECIFIED ABOVE.		BY					
4-1-64				D. J. Diamond					
POSTER POSTED BY		LIST POSTED BY		DATE					
21									
DATE		DATE		DATE					
22									



STATE UNIVERSITY OF NEW YORK
THURLOW TERRACE
ALBANY, NEW YORK

PERSONNEL OFFICE

[fol. 282]

January 24, 1964

To: Faculty Senators and Chief Administrative Officers

Re: Grievance Procedure, Academic Employees

Three and a half years having passed since the establishment and distribution of the University's grievance procedure for employees in the unclassified service, it seems appropriate to reannounce the procedure and policy, in the interests of full understanding and information.

The basic policy was established by resolution of the Faculty Senate as recorded on page 12 of the Minutes of May 9-10, 1960, as follows:

RESOLVED that the function of the Senate with respect to matters of mutual interest to the faculties of the University be exercised, in the case of faculty grievances which cannot be satisfactorily resolved through the efforts of the committee serving that purpose at the institution concerned, by referring such matters for review, including hearing the faculty member alleging the grievance, to the Personnel Policies Committee of the Senate. If such committee cannot effect a satisfactory settlement of the grievance, a report of the matter shall be made to the full Senate which shall consider the same and make its advisory recommendation to the President.

College Faculties have latitude for local autonomy in forms of organization, per Article X, Section 5 of the Policies of the Board of Trustees. The University has encouraged the establishment, at each unit, of a committee whose function includes the consideration of faculty grievances at the local level. The University does not prescribe the specific organization and procedure for such committees, but does require that there be a procedure at each unit.


An academic employee may obtain information as to the local procedure at his or her unit through normal administrative channels at the unit, or from the chief administrative officer, or from the faculty senator.

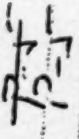
Distribution:

Each State-operated Unit (3)

Each faculty senator and alternate

(for distribution at meeting of January 27, 1964)


David S. Price
Assistant Vice President



U. T. NOEL
OFFICIAL REPORTER
U. S. DISTRICT COURT

Birth Date _____

STATE UNIVERSITY OF NEW YORK AT BUFFALO
BUFFALO 14, NEW YORK

TO THE CHANCELLOR OF THE UNIVERSITY:

I recommend * _____ the appointment of _____

Name _____
Mr. Mrs. Miss _____
First Middle Last _____
Starbuck

Address _____

as (title)† _____ Lecturer

Department _____ English _____ College, School or Division _____ LFC

Proposed salary (1) Annual \$ _____ (2) If for term, amount for term, \$ 400.00

(3) If part-time, at the rate of, \$ _____ ; total amount needed \$ _____

TERMS OF APPOINTMENT (Check one item in each column below):

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Full-Time | <input type="checkbox"/> Academic Year | <input type="checkbox"/> New Position | <input type="checkbox"/> New Employee |
| <input checked="" type="checkbox"/> Part-Time | <input type="checkbox"/> 12 Months Year | <input type="checkbox"/> Replacement ‡ | <input type="checkbox"/> Previously on staff § |
| <input type="checkbox"/> Part Salary | | <input type="checkbox"/> Promotion | |
| <input type="checkbox"/> Without Pay | | <input type="checkbox"/> Reappointment | |

This appointment covers _____ % of full-time appointment.

To become effective _____ January 27, 19 64 To expire _____ May 23, 19 64

Budget item No. 25 TS If a transfer of funds is required it should come from Item No. _____

Additional Information _____

Signed _____ Date _____ February 1, 1964
(Dean or Director)

Approved by _____
(Central Administration)

Authorization by Council Date _____

Date: _____ Notification Letter sent Date _____

Deans, Directors, and others concerned are requested to fill out the form in six copies for all recommended staff changes and forward five copies to the Vice Chancellor for Educational Affairs, who, after appropriate investigation, will forward recommendation to the Chancellor. When approved, form No. 4 will be returned to the Dean (or Director) who originated the request.

*** Insert appropriate wording:**

(1) the appointment of _____ (2) the reappointment of _____ (3) the promotion of _____

(4) leave of absence for (state purpose) _____

(5) change in salary for (be sure to show present salary and distribution as to Depts. or Funds)

(7) removal of name from payroll (state reason) _____

(6) acceptance of the resignation of _____

(8) change in distribution of salary as to Depts. or Funds

(9) change in title of _____

† Give title exactly as it should appear in notification letter, catalog, and directory.

‡ Give name of predecessor. Use line marked "Additional Information."

§ Give approximate date and state in what capacity. Use line marked "Additional Information."

(In the case of new appointments, two copies of the biographical data form should accompany the recommendation.)

Check One:

- ☒ Faculty
☐ Non Faculty
☐ U.B. Student

DEPARTMENT OF AUDIT AND CONTROL
DEPARTMENT OF CIVIL SERVICE

FOLLOW DETAILED INSTRUCTIONS IN
MAKING ENTRIES ON THIS FORM

[fol. 284]

PAYROLL AND PERSONNEL
TRANSACTION FORM PR-75B

FOR USE OF THE DEPARTMENT OF AUDIT AND CONTROL ONLY				AGENCY CONTROL NUMBER	825
01	GROSS AND ANNUAL	34	RELEASE - TERMINATION		
01	GROSS	31	RELEASE - TRANSFER		
01	ANNUAL (39-47)	32	RELEASE - TEMPORARY		
01	GR. & ANN. - X-78 (NAME 11-25/49-62)	33	TITLE (GR 29-37/ TITLE 49-62)		
49	LINE CHANGE (NEW 29-37)	5	SUMMARY		
35	NAME CHANGE (NEW 49-62)	ST	SUMMARY TRANSFER		

GROUP

☐ 1 ☒ 2 ☐ 3

DEPT. DIVISION PAYROLL AGENCY

11 20 State University of New York at Buffalo

1	LINE NUMBER	0	3	NAME	FIRST NAME	MIDDLE INITIAL	LAST NAME
2	20573			George			George
4	LINE NUMBER CHANGED TO	5	5	NAME CHANGED TO	FIRST NAME	MIDDLE INITIAL	LAST NAME
4	12399						
6	GROSS SALARY (ADD)	(COLS. 29-37)	447	80	ANNUAL SAL. (COLS. 39-47)	100	10 MOS. SAL. X-75 (COLS. 39-47)
6					600		8
10	PREV. PERIOD GROSS SALARY (DEDUCT)	(COLS. 29-37)	247	11	GRADE (COLS. 29-37)	60	TITLE (COLS. 49-62)
10							Asst. Acquisition
12	NAME OF STATE AGENCY WHERE LAST EMPLOYED (IF ANY)				DATE OF LAST CHECK	13	5/10/64
12					NATURE OF ACTION (USE CODE)	14	15
12							15

REMARKS

Pay 1st half of evening division salary - 400.00 (REG.) 1/27/64 - 5/23/64.

44 in. line no ✓

P-7

CERTIFICATE VALID UNTIL

THIS CERTIFIES THAT THE ABOVE EMPLOYMENT IS IN ACCORDANCE WITH LAW AND RULES MADE IN PURSUANCE TO LAW, SUBJECT TO ANY LIMITATION OR CONDITION SPECIFIED ABOVE.

(DATE)

DATE

POSTER POSTED BY

COPY 5

PLAINTIFF'S EXHIBIT 8

TO: Dr. David S. Price

SUBJECT: Request for appointment

DATE: September 24, 1963

State University of New York at Buffalo requests approval to appoint Mr. George Starbuck as Assistant in Acquisition NS at an annual salary of \$6480, effective October 1, 1963.

We would be able to use budget line 14,283, which was filled by Mrs. Hallowitz, who is now working on a part-time basis. Sufficient money is within our budget since \$6980 was requested for this line effective July 1, 1963.

Mr. Starbuck received his A.B. from the University of Chicago in 1956, and has had one year of graduate work at Chicago and one semester at Harvard.

He has some literary credit in that he has authored Bone Thoughts (Yale Press 1960), L.P. record through the Yale series of recorded poets and a number of poems published in New Yorker, Harpers, Atlantic Monthly.

During 1961-62 he won a Guggenheim Fellowship and Prix de Rome 1961-63. He has been editor of the trade department for the Houghton Mifflin Publishing Company from 1958-61.

Mr. Starbuck's experience is publishing in addition to his good educational and literary background would make him a welcome and desirable addition to the library staff.

We would hope that this position is eventually classified at the U-5 level, but in any event, we feel that at least \$6480 is necessary to attract Mr. Starbuck.

HARRY W. POPPEY

WHS/jw

RS
RS

Approved in All
T.S. Smith
10/1/63
By is attached

Starbuck
George Starbuck
P.F.

STATE UNIVERSITY OF NEW YORK
THURLOW TERRACE
ALBANY, NEW YORK



PERSONNEL OFFICE

October 2, 1963

To: Mr. Poppey - SUNY at Buffalo

Re: Starbuck Appointment

We have received your request to appoint Mr. George Starbuck as Assistant in Acquisition NS, at an annual salary of \$6,480 effective October 1, 1963.

You indicate that this will be Item 14391. This position is presently carried on your Certificate of Approval at a salary of less than \$6,480. You should therefore appoint Mr. Starbuck as an Assistant Librarian II, U-5, in unallocated temporary service. If you prefer to place Mr. Starbuck in Item 14391 you should amend your Certificate of Approval to reflect the additional salary required.

I understand that the appointment of Mrs. Hallowitz, who is now serving in this position on a part time basis, will be discontinued upon Mr. Starbuck's appointment.

Harvey Randall
Associate Personnel Administrator

P-1
RECEIVED
OCT 10 1963
U.S. DEPT. OF JUSTICE

PLAINTIFF'S EXHIBIT 10

STATE UNIVERSITY OF NEW YORK AT BUFFALO

BUDGET PROPOSAL FOR FISCAL YEAR 1964-1965

PERSONAL SERVICE

DIVISION University Libraries

ACCOUNT SEG. LINE	NAME	RANK AND TITLE	GRADE	TERM	MONTHS	APPROPRIATED 1963-1964	DIRECT INCOME OFFSET	1964-1965 REQUESTED	STAT- UTORY	RECLASS- IFICATIONS	NEW POSITIONS	GRADE	TERM	MONTHS
	<u>Professional</u>													
1 4371	O. A. Silverman	Director and Professor	NS	C	12	\$17,500		18764	464	800				
2 4372	W. B. Ernst	Associate Director	NS	C	12	13,140		13536	396					
3 4374	J. P. Herling	Assistant Director for Readers Services	NS	C	12	8,980		9304	324					
4 4375	H. C. Atkinson	Assistant Director for Technical Services	NS	C	12	8,980		9304	324					
5 4376	A. E. Sy	Curator of Special Collections	NS	C	12	8,980		9304	324					
6 4377	M. Hawkins	Health Science Librarian	NS	C	12	10,954		11,292	338					
7		Physical Science Librarian Base: 9,300 Eff. 7/1/64						6975			6975	U-15	C	12
8 4385	H. H. Lyman	Reference Librarian	NS	C	12	8,988		9292	304					
9 4380	N. T. Cohen	Acquisition Librarian	NS	C	12	8,080		8380	300					
10 4383	M. C. McCarthy	Circulation Librarian	NS	C	12	8,050		8350	300					
11 4382	M. Y. Johnston	Catalog Librarian	NS	C	12	8,080		8380	300					
12 4378	I. M. Cheplowitz	Chemistry Librarian	NS	C	12	7,260		7538	278					
13 4387	E. F. Ellis	Subject Specialist	NS	C	12	7,260		7538	278					
14 4389		Subject Specialist	NS	C	12	6,980		6980						
5 4391	G. E. Starbuck	Order Librarian	NS	C	12	6,480		6738	258					

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STATE UNIVERSITY OF NEW YORK AT BUFFALO

BUDGET PROPOSAL FOR FISCAL YEAR 1964-1965

PERSONAL SERVICE

DIVISION University Libraries

BUDGET ITEM #	ACCOUNT SEG. LINE	NAME	RANK AND TITLE	GRADE	TERM	MONTHS	APPROPRIATED 1963-1964	DIRECT INCOME OFFSET	1964-1965 REQUESTED	STAT- UTORY	RECLASS- IFICATIONS	NEW POSITIONS	GRADE	TERM
16	4388	H. Haberman	Subject Specialist	NS	C	12	6,980		7252	272				
17	4396	R. P. Haro	Subject Specialist	NS	C	12	7,250		7528	278				
18	4392	I. R. Sweeney	Order Librarian	NS	C	12	6,470		6728	258				
19	4393	R. Bartholomew	Gift and Exchange Librarian	NS	C	12	6,480		6738	258				
20	4394	M. Devrnja	Assistant Catalog Librarian	NS	C	12	7,260		7538	278				
21	4390	V. B. Thwestt	Assistant Reference Librarian	NS	C	12	7,250		7528	278				
22	4395	V. K. Church	Cataloger	NS	C	12	5,910		6169	259				
23	4397	A. Lichtenstein	Cataloger	NS	C	12	6,480		6738	258				
24	4400	E. Mack	Assistant Reference Librarian	NS	C	12	6,480		6738	258				
25	4401	R. Watson	Assistant in Reference	NS	C	12	6,240		6492	252				
26	4402		Assistant in Reference	NS	C	12	6,470		6470	—				
27	4403	G. L. Dewey	Assistant Circulation Librarian	NS	C	12	7,260		7538	278				
28	4405	J. Saab	Reference Librarian - Health Sciences	NS	C	12	6,240		6492	252				
29	4404	E. A. Rogers	Engineering Library	NS	C	12	5,910		6169	259				

STATE UNIVERSITY OF NEW YORK AT BUFFALO

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PERSONAL SERVICE

BUDGET PROPOSAL FOR FISCAL YEAR 1964-1965

DIVISION University Library

BUDGET ITEM #	ACCOUNT SEG. LINE	NAME	RANK AND TITLE	GRADE	TERM	MONTHS	APPROPRIATED 1963-1964	DIRECT INCOME OFFSET	1964-1965 REQUESTED	STAT- UTORY	RECLASS- IFICATIONS	NEW POSITIONS	GRADE	TERM
30	4406		Assistant in Reference	NS	C	12	5,910		5910	—				
31	4407	A. A. Russell	Assistant in Poetry	NS	C	12	5,910		6169	259				
32	4399	J. M. Ertavi	Assistant in Reference	NS	C	12	4,750		5910		1160			
33	4408	J. Y. Lih	Cataloger	NS	C	12	6,240		6492	252				
34	4409	C. Woodruff	Cataloger	NS	C	12	5,910		6169	259				
35	4410	P. Bommer	Cataloger	NS	C	12	5,910		6169	259				
36	4411	P. E. Pepper	Documents Librarian	NS	C	12	5,910		6169	259				
37	4416	K. Maloney	Assistant in Circulation	NS	C	12	5,910		6169	259				
38	4417	H. Davidson	Periodicals Librarian	NS	C	12	5,910		6169	259				
39		P. Lowenberg	Assistant in Reference	NS	C	12	6,480		6738	258				
40		J. Drost	Assistant in Reference	NS	C	12	5,910		6169	259				
41		S. A. Drzewieniecki	Cataloger	NS	C	12	5,910		6169	259				
42			Cataloger	NS	C	12	5,910		5910	—				
43			Reference Librarian - Health Sciences	NS	C	12	5,910		5910	—				
44	4412		Intern	NS	C	12	4,750		4500	—				
	4413	E. Krakauer	Intern	NS	C	12	4,500		5000	—	500			

STATE UNIVERSITY OF NEW YORK AT BUFFALO

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PERSONAL SERVICE

BUDGET PROPOSAL FOR FISCAL YEAR 1964-1965

DIVISION University Libraries

ACCOUNT SEG. LINE	NAME	RANK AND TITLE	GRADE	TERM	MONTHS	APPROPRIATED 1963-1964	DIRECT INCOME OFFSET	1964-1965 REQUESTED	STAT- UTORY	RECLASS- IFICATIONS	NEW POSITIONS	GRADE	TERM	MONTHS
4414	J. Bement	Intern	NS	C	12	4,500		5000	—	500				
4415	J. Rynne	Intern	NS	C	12	4,500		5000	—	500				
		Assistant to the Director Base: 5,910 Eff. 1/7/64						4432.50			4432.50	SG 14	C	12
		Cataloger Base: 5,910 Eff. 1/7/64						4432.50			4432.50	SG 14	C	12
		Cataloger Base: 5,910 Eff. 1/7/64						4432.50			4432.50	SG 14	C	12
		Assistant in Acquisitions Base: 5,910 Eff. 1/7/64						4432.50			4432.50	SG 14	C	12
		Assistant in Acquisitions Base: 5,910 Eff. 1/7/64						4432.50			4432.50	SG 14	C	12
	Temporary Service	Various				56,195		56,392.50						

STATE UNIVERSITY OF NEW YORK AT BUFFALO

PERSONAL SERVICE

BUDGET PROPOSAL FOR FISCAL YEAR 1964-1965

DIVISION

University Library

BUDGET ITEM #	ACCOUNT SEG. LINE	NAME	RANK AND TITLE	GRADE	TERM	MONTHS	APPROPRIATED 1963-1964	DIRECT INCOME OFFSET	1964-1965 REQUESTED	STAT- UTORY	RECLASS- IFICATIONS	NEW POSITIONS	GRADE	TERM
		<u>Non-Professional</u>												
54	4474	M. Salatino	Secretary	SG 8	C	12	5,000		5,201	201				
55	4473	J. J. Halliday	Stenographer	SG 8	C	12	4,019		4,220	201				
56	4508	S. C. Anderson	Health Science Library Assistant	NS	C	12	4,070		4,070	—				
57	4499	P. Burns	Circulation Assistant	NS	C	12	4,070		4,070	—				
58	4500	A. H. Ryan	Chief Finance Section	NS	C	12	4,012		4,205	193				
59	4501	M. A. Brainerd	Acquisition Assistant	NS	C	12	3,862		4,024	162				
60	4513	A. Ault	Supervisor Physics Library	NS	C	12	3,662		3,824	162				
61	4477	A. Rote	Chief, Reserve Room	NS	C	12	3,662		3,824	162				
62	4482	L. H. Haas	Chief, Periodical Section	NS	C	12	3,662		3,824	162				
63	4479	G. Hardy	Circulation Assistant	NS	C	12	3,260		3,422	162				
64	4478	M. Kawinski	Circulation Assistant	NS	C	12	3,422		3,584	162				
65	4480	N. B. Reeves	Circulation Assistant	NS	C	12	3,422		3,584	162				
66	4481	G. R. Hazelwood	Circulation Assistant	NS	C	12	3,422		3,584	162				
67	4485	D. Malinowski	Circulation Assistant	NS	C	12	3,422		3,584	162				
68	4486	A. L. Frank	Chief, Circulation Desk	NS	C	12	3,422		3,584	162				

STATE UNIVERSITY OF NEW YORK AT BUFFALO

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PERSONAL SERVICE

BUDGET PROPOSAL FOR FISCAL YEAR 1964-1965

DIVISION University Libraries

	ACCOUNT SEG. LINE	NAME	RANK AND TITLE	GRADE	TERM	MONTHS	APPROPRIATED 1963-1964	DIRECT INCOME OFFSET	1964-1965 REQUESTED	STAT- UTORY	RECLASS- IFICATIONS	NEW POSITIONS	GRADE	TERM	MONTHS
	4487	K. Irr	Periodical Assistant	NS	C	12	3,422		3,584	162					
70	4488	S. Soltysiak	Circulation Assistant	NS	C	12	3,260		3,422	162					
	4489	M. Usewicz	Circulation Assistant	NS	C	12	3,422		3,584	162					
72	4490	M. Gerber	Circulation Assistant	NS	C	12	3,260		3,422	162					
12	4483	W. A. Wojciechowski	Stackman	NS	C	12	3,422		3,584	162					
	4484	N. Squitieri	Stackman	NS	C	12	3,422		3,584	162					
	4491	M. Hehr	Catalog Assistant	NS	C	12	3,422		3,584	162					
76	4492	M. Frederick	Catalog Assistant	NS	C	12	3,422		3,584	162					
	4493	M. Hillman	Chief, Card Section	NS	C	12	3,462		3,624	162					
	4494	J. F. Anderson	Catalog Assistant	NS	C	12	3,422		3,584	162					
79	4495	W. Embree	Catalog Assistant	NS	C	12	3,422		3,584	162					
	4496	T. O'Donnell	Catalog Assistant	NS	C	12	3,260		3,422	162					
81	4497	C. D. Schick	Catalog Assistant	NS	C	12	3,422		3,584	162					
82	4498	P. D. Smith	Catalog Assistant	NS	C	12	3,422		3,584	162					
	4502	M. Van Wie	Acquisition Assistant	NS	C	12	3,422		3,584	162					
84	4503	W. Beed	Acquisition Assistant	NS	C	12	3,422		3,584	162					
85	4504	G. Wozniak	Acquisition Assistant	NS	C	12	3,422		3,584	162					

STATE UNIVERSITY OF NEW YORK AT BUFFALO

BUDGET PROPOSAL FOR FISCAL YEAR 1964-1965

PERSONAL SERVICE

DIVISION University Libraries

ACCOUNT SEG. LINE	NAME	RANK AND TITLE	GRADE	TERM	MONTHS	APPROPRIATED 1963-1964	DIRECT INCOME OFFSET	1964-1965 REQUESTED	STAT- UTORY	RECLASS- IFICATIONS	NEW POSITIONS	GRADE	TERM	MONTHS
45 4505		Chief Acquisition Assistant	NS	C	12	3,260		3,260	—					
87 4506	R. Roskwitalski	Chief, Binding Section	NS	C	12	3,422		3,584	162					
8 4507	H. Merrill	Gift and Exchange Ass't	NS	C	12	3,260		3,422	162					
89 4509	D. Sheenan	Health Science Library Assistant	NS	C	12	3,260		3,422	162					
90 4510	M. Battaglia	Chief of Circulation Health Sciences	NS	C	12	3,462		3,624	162					
91 4511	R. Renne	Health Sciences Library Assistant	NS	C	12	3,422		3,584	162					
92 4512	C. Meadow	Chemistry Library Assistant	NS	C	12	3,260		3,422	162					
93 4514	F. F. Barthol	Engineering Library Assistant	NS	C	12	3,422		3,584	162					
94 4475	J. Pecora	Typist	SG 3	C	12	3,260		3,422	162					
95 4476	C. Domiano	Circulation Assistant	SG 3	C	12	3,260		3,422	162					
96 4518	G. Henderson	Acquisitions Assistant	SG 3	C	12	3,260		3,422	162					
97 4519	S. Kowaleski	Circulation Assistant	SG 3	C	12	3,260		3,422	162					
98 4516	J. Devore	Catalog Assistant	SG 3	C	12	3,422		3,584	162					
99 4521	R. E. Goatseay	Catalog Assistant	SG 3	C	12	3,260		3,422	162					
100 4522	D. Baron	Catalog Assistant	SG 3	C	12	3,260		3,422	162					
101 4523	S. Ferreri	Acquisition Assistant	SG 3	C	12	3,260		3,422	162					

STATE UNIVERSITY OF NEW YORK AT BUFFALO

BUDGET PROPOSAL FOR FISCAL YEAR 1964-1965

PERSONAL SERVICE

DIVISION University Libraries

	ACCOUNT SEG. LINE	NAME	RANK AND TITLE	GRADE	TERM	MONTHS	APPROPRIATED 1963-1964	DIRECT INCOME OFFSET	1964-1965 REQUESTED	STAT- UTORY	RECLASS- IFICATIONS	NEW POSITIONS	GRADE	TERM	MONTHS
02	4524	D. Cronwell	Acquisition Assistant	SG 3	C	12	3,260		3,422	162					
03	4525	J. Renzoni	Acquisition Assistant	SG 3	C	12	3,260		3,422	162					
04	4528	C. Lewandowski	Acquisition Assistant	SG 3	C	12	3,260		3,422	162					
05	4529	J. Williams	Gift and Exchange Assistant	SG 3	C	12	3,260		3,422	162					
06	4530		Gift and Exchange Assistant	SG 3	C	12	3,260		3,260						
07			Periodicals Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
08			Periodicals Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
09			Catalog Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
10			Catalog Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
11			Acquisition Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
12			Acquisition Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
13			Acquisition Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
14			Acquisition Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12

STATE UNIVERSITY OF NEW YORK AT BUFFALO

BUDGET PROPOSAL FOR FISCAL YEAR 1964-1965

SERVICE

DIVISION University Libraries

NAME	RANK AND TITLE	GRADE	TERM	MONTHS	APPROPRIATED 1963-1964	DIRECT INCOME OFFSET	1964-1965 REQUESTED	STAT- UTORY	RECLASS- IFICATIONS	NEW POSITIONS	GRADE	TERM	MONTHS
	Acquisition Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
	Circulation Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
	Circulation Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
	Circulation Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
	Circulation Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
	Circulation Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
	Poetry Room Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
	Engineering Library Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12
	Health Sciences Library Assistant Base: 3,260 Eff. 1/7/64						2,445			2,445	SG 3	C	12

2.3 Expenditures chargeable to appropriations. Expenditures chargeable to an appropriation must be for the purpose and within the fiscal year for which the appropriation is made. Vouchers in support of expenditures must clearly show that the purposes of such expenditures are those for which the appropriation chargeable therewith was made. (State Finance Law, § 43.) See Part 17 hereof for definitions of classification of expense by titles, promulgated by the Comptroller under the authority of section 52 of the State Finance Law.

2.4 Purchase or rent of automobiles and aircraft. The purchase of an automobile adapted and intended primarily for the carrying of passengers, or the rent thereof, for such purpose, for a period longer than 10 days, or the purchase or rent of aircraft, is prohibited by law (State Finance Law, § 43), unless moneys are specifically appropriated therefor. However, this provision does not apply to the necessary rental of automobiles for highway construction and maintenance, or for grade crossing elimination work.

2.5 Segregation of lump sum appropriations. Lump sum appropriations for personal service, or for maintenance and operation, or for maintenance and operation including personal service, other than such appropriations for the Legislature or judiciary, are not available for payments, except specified appropriations for temporary service or day labor, until a schedule of positions and salaries and the amounts to be available for the expenses of maintenance and operations, has been approved by the director of the budget, and a certificate of approval filed with the chairman of the Senate Finance Committee and the chairman of the Assembly Ways and Means Committee and the State Comptroller. Any such approved schedule may be amended, however, with the approval of the director of the budget and the filing of a certificate thereof with such officers above-named. (State Finance Law, § 49.)

2.6 Transfers of appropriations; certain institutions. Section 50 of the State Finance Law provides that if the sums appropriated to institutions in the Department of Mental Hygiene, the Correction Department, the Department of Health and the Department of Social Welfare are found to be insufficient at one or more institutions and more than required at other institutions, "the Commissioner of Mental Hygiene or the Commissioner of Correction, as the case may be, shall submit a schedule of positions and salaries and of amounts to be available for maintenance and operation, other than personal service, to the director of the budget, who upon approval of such schedule and the filing of a certificate of such approval with the chairman of the Senate Finance Committee, and the chairman of the Assembly Ways and Means Committee, shall file a certificate with the Department of Audit and Control which shall transfer a portion of the appropriation made for personal service from one institution to another and likewise shall transfer a portion of the appropriation for maintenance and operation from one institution to another...." The same section further provides that upon the filing of a similarly approved certificate with the Department of Audit and Control, a sum adequate for the purpose of establishing a system of community care of legally admitted patients and inmates, may be transferred to a fund for such purpose in the Department of Mental Hygiene from the money appropriated for personal service including additional compensation in lieu of maintenance and for maintenance and operation of any institution in the Department of Mental Hygiene. Similar transfers are permitted between State parks and between agricultural and technical institutes.

2.7 Interchange of items of appropriation. The amount of any item shown in a schedule, supporting an appropriation for other maintenance and operation, may be increased or decreased by interchange with other items in the same schedule, or with other items not in the same schedule but which were contained in the Comptroller's classification of items as last promulgated, with the approval of the director of the budget, filed with the Comptroller, the Senate Finance Committee and the Assembly Ways and Means Committee. (State Finance Law, § 51.)

PART 3

PERSONAL SERVICE

(Statutory authority: State Finance Law, arts. 7, 9)

Sec.	Sec.
3.1 Personal service paid from federal moneys	3.9 Sunday and holiday services
3.2 Approval by State Civil Service Commission	3.10 Retirement system
3.3 Exceptions by Civil Service Commission	3.11 Delivery of checks to temporary and per diem employees
3.4 Payroll certificates	3.12 Standard forms prescribed
3.5 Computation of salary rate	
3.6 Notification of appointments, promotions, etc.	3.51 Exemptions
3.7 Payrolls prepared by Comptroller	3.52 Monthly withholding reports
3.8 Payrolls prepared by departments	3.53 Individual tax records
	3.54 Reports to be filed by agencies
	3.55 Maintenance

WITHHOLDING TAX

Historical Note

Part repealed (§§ 3.1-3.26; 3.51-3.55), new 1962*; repealed, new added (§§ 3.1-3.12; 3.51-3.55), filed Mar. 5, 1962 to be eff. Oct. 4, 1962 to be eff. Oct. 15, 1962.

Section 3.1 Personal service paid from federal moneys. Expenditures for additional personal service, payable from federal moneys granted or allocated as part of the expense of administering a federal aid law or act of Congress must be made in accordance with schedules approved by the director of the budget. (State Finance Law, § 108.)

Historical Note

Sec. repealed, new added, filed Mar. 5, 1962; repealed, new added, filed Oct. 4, 1962 to be eff. Oct. 15, 1962. Former sec. related to biweekly payment of salaries.

3.2 Approval by State Civil Service Commission. The payment of salary or compensation to any person holding a position in the classified service is unlawful unless such person is certified by the State Civil Service Commission as lawfully employed in his position. Such certification may be made on an extended basis without time limitation or may be made for a limited period only. No further certification shall be necessary for the payment of compensation to such person so long as his status remains unchanged and during the stated limited period, if any. The Department of Civil Service shall examine the payroll of an agency at least once a year to determine that all persons listed on such payroll are employed in accordance with Civil Service Law and rules. (Civil Service Law, § 100.)

Historical Note

Sec. repealed, new added, filed Mar. 5, 1962; repealed, new added, filed Oct. 4, 1962 to be eff. Oct. 15, 1962. Former sec. related to specific appropriations for personal service.

3.3 Exceptions by Civil Service Commission. Whenever the Civil Service Commission takes exception to the name of the person appearing on a payroll, submitted for certification, the salary of such person will not be included in the payment of the payroll. However, the name of the person so eliminated may be resubmitted for certification.

Historical Note

Sec. repealed, new added, filed Mar. 5, 1962; repealed, new added, filed Oct. 4, 1962 to be eff. Oct. 15, 1962. Former sec. related to fixing of salaries not prescribed by law.

3.4 Payroll certificates. Every payroll must bear a certification signed by the head of the department concerned or by other persons to whom the authority to sign such certification has been delegated. Such delegation must be made by written direction of the head of the department, and filed in the Department of Audit and Control. The certification must state that individuals to whom payment is to be made "are employed solely in and have actually performed the proper duties

* Resolution filed March 5, 1962 was not published in the Official Compilation.

PAYROLL AND PERSONNEL
TRANSACTION FORM PR-75

[fol. 298]

DEFENDANTS' EXHIBIT D-1

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FOR USE OF DEPARTMENT OF AUDIT & CONTROL ONLY										AGENCY CONTROL NUMBER																													
<table border="1"> <tr> <td>01</td><td>GROSS & ANNUAL</td> <td>34</td><td>RELEASE - TERMINATION</td> </tr> <tr> <td>01</td><td>GROSS</td> <td>31</td><td>RELEASE - TRANSFER</td> </tr> <tr> <td>01</td><td>ANNUAL (38-47)</td> <td>32</td><td>RELEASE - TEMPORARY</td> </tr> <tr> <td>01</td><td>GR. & ANN. 278</td> <td>33</td><td>TITLE</td> </tr> <tr> <td colspan="2">(NAME 11-25/48-62)</td> <td colspan="2">(GR 28-37/TITLE 48-62)</td> </tr> <tr> <td>49</td><td>LINE CHANGE (NEW 28-37)</td> <td>5</td><td>SUMMARY</td> </tr> <tr> <td>38</td><td>NAME CHANGE (NEW 48-62)</td> <td>ST</td><td>SUMM. TRANSFER</td> </tr> </table>										01	GROSS & ANNUAL	34	RELEASE - TERMINATION	01	GROSS	31	RELEASE - TRANSFER	01	ANNUAL (38-47)	32	RELEASE - TEMPORARY	01	GR. & ANN. 278	33	TITLE	(NAME 11-25/48-62)		(GR 28-37/TITLE 48-62)		49	LINE CHANGE (NEW 28-37)	5	SUMMARY	38	NAME CHANGE (NEW 48-62)	ST	SUMM. TRANSFER	1677	
01	GROSS & ANNUAL	34	RELEASE - TERMINATION																																				
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NOMINEE MUST COMPLETE THIS SIDE OF FORM

PRINT IN INK ANSWERS TO ALL QUESTIONS, ETC.

1. LAST NAME Starbuck FIRST NAME George INITIAL E

2. ADDRESS NUMBER AND STREET 958 Lafayette Ave. CITY, TOWN OR VILLAGE Buffalo 9 STATE N.Y.

3. HOW LONG HAVE YOU CONTINUOUSLY BEEN A LEGAL RESIDENT OF NEW YORK STATE? YEARS MONTHS 1 1 YOUR COUNTY? 1

4. ARE YOU A CITIZEN OF THE UNITED STATES? If yes, check one of the following: ☒ BY BIRTH ☐ BY NATURALIZATION

5A. NEW YORK LAW AGAINST DISCRIMINATION PROHIBITS DISCRIMINATION BECAUSE OF AGE, DATE OF BIRTH, SEX, HEIGHT, HAIR, COLOR, WEIGHT, EYES, COMPLEXION, OR ANY UNLAWFUL MEANS? YES NO ☒ ☐

5B. SOCIAL SECURITY NUMBER 546-40-1223

6. HAVE YOU EVER BEFORE FILED AN APPLICATION WITH THE STATE DEPARTMENT OF CIVIL SERVICE? IF "YES," GIVE TITLE OF POSITION, DATE FILED, AND RESULT OF ANY EXAMINATION UNDER "REMARKS." YES NO ☐ ☒

8. HAVE YOU ANY PHYSICAL DEFECT OR DISEASE OR DISABILITY OR WAR-INCURRED DISABILITY? IF "YES," DESCRIBE ACCURATELY UNDER "REMARKS." YES NO ☐ ☒

9. HAVE YOU EVER HAD EPILEPSY OR ANY MENTAL OR NERVOUS AILMENT OR BEEN A PATIENT IN AN INSTITUTION FOR THE TREATMENT OF SUCH AILMENTS? YES NO ☐ ☒

10. WERE YOU EVER DISMISSED FROM ANY GOVERNMENT EMPLOYMENT FOR REASONS OTHER THAN LACK OF WORK OR FUNDS? IF "YES," EXPLAIN UNDER "REMARKS." YES NO ☐ ☒

11. EXCEPT FOR MINOR TRAFFIC VIOLATIONS: (a) WERE YOU EVER ARRESTED FOR ANY VIOLATION OF LAW? (a) YES NO ☐ ☒ (b) WERE YOU EVER INDICTED FOR ANY VIOLATION OF LAW OR HAVE YOU EVER BEEN A DEFENDANT IN A CRIMINAL PROCEEDING? (b) YES NO ☐ ☒ (c) WERE YOU EVER CONVICTED OF ANY VIOLATION OF LAW? (c) YES NO ☐ ☒

IF "YES," GIVE PARTICULARS AND DISPOSITION OF EACH CHARGE UNDER "REMARKS."

12. IF A LICENSE OR CERTIFICATE IS REQUIRED FOR THIS POSITION, FILL IN BELOW. NAME OF TRADE OR PROFESSION.

LICENSE ISSUED BY: CITY OR STATE OF: LICENSE NUMBER: LICENSED (FROM - TO): IF NOT YET ACQUIRED, STATE DATE OF APPLICATION:

7. HAVE YOU EVER ADVISED OR TAUGHT OR WERE YOU EVER A MEMBER OF ANY SOCIETY OR GROUP OF PERSONS WHICH TAUGHT OR ADVISED OR CATED THE DOCTRINE THAT THE GOVERNMENT OF THE UNITED STATES OR OF ANY POLITICAL SUBDIVISIONS THEREOF SHOULD BE OVERTHROWN OR OVERTURNED BY FORCE, VIOLENCE OF THIS QUESTION IS PROHIBITED BY LAW. IF "YES," GIVE TITLE OF POSITION, DATE FILED, AND RESULT OF ANY EXAMINATION UNDER "REMARKS." YES NO ☐ ☒

13. EDUCATION

ELEMENTARY SCHOOL	NAME OF SCHOOL AND LOCATION	ATTENDED FROM - TO		NUMBERS OF YEARS CREDITED	DID YOU GRADUATE?	MAJOR SUBJECT	COLLEGE CREDITS	DEGREE REC'D
		Mo.	Year					
	Chubbuck School, Palling Hills, Cal.	Sep 1941	Sep 1941	6	yes	Math	10	
	Calif. Institute of Technology, Pasadena	Sep 1947	May 1949	2	yes	Math	10	
	U. of Chicago	Sep 1954	June 1957	3	yes	English	6	
	U. of Calif.	Sep 1950	Feb 1951	1/2	yes	English	6	
	Harvard U.	Sep 1957	Feb 1958	1/2	yes	English	6	

OTHER SCHOOLS OR SPECIAL COURSES: BA (M.A.)

* IF YOU HAVE A NEW YORK STATE HIGH SCHOOL EQUIVALENCY DIPLOMA, GIVE NUMBER AND YEAR ISSUED:

14. EXPERIENCE

NAME, ADDRESS AND BUSINESS OF EMPLOYER	MONTHLY EARNINGS	EMPLOYED FROM - TO		REASON FOR LEAVING	TITLE AND DUTIES OF YOUR POSITION (ATTACH ADDITIONAL SHEETS IF NECESSARY)
		Mo.	Year		
Aviation Academy in Rome	Fulltime \$3500/mo	Sep 1961	Sep 1963	end of project	Fulltime - Project in Rome in Creative Writing (Independent Study)
Hughes Mifflin Co Boston	\$5000/mo	Feb 1958	July 1961	about 10 months	Editor - Trade Dept (editing general fiction and non-fiction)
University of Chicago USAF Test Contract - Project, Chicago 37, Ill	\$2000/mo (part time)	Feb 1956	Jun 1957	off to Harvard	Test Editor (editing tests for USAF) or (correspondence course - all ages level)
Various colleges and (old) Dept. Public Health	various	total of 4 years			Lab. Assistant - Research Assistant

15. REMARKS ATTACH ADDITIONAL SHEETS OF PAPER IF MORE SPACE IS NEEDED.

I declare, subject to the penalties of perjury, that the statements made in this application (including statements made in any accompanying papers) have been examined by me and to the best of my knowledge and belief are true and correct.

28 October 1963

Date

George Starbuck

Signature of Applicant

Joe Harris, R. J. J.

- CIVIL SERVICE USE: Serial Number

SEE ATTACHED

[fol. 300]

PLAINTIFF'S EXHIBIT 12

(Letterhead of State University of New York, Albany 1)

The accompanying publication entitled "Regents Rules on Subversive Activities" contains those sections of the State Education Law which deal with the matter of subversive activities together with the rules established by the Regents in accordance therewith.

You will note, while both the Law and regulations are very specifically directed toward the elimination and non-appointment of "Communists" from or to our teaching ranks, they also set up safe-guards in terms of definitions and procedures, intended to protect the civil rights of the individual.

The regulations provide, among other things, that a person who was a member of the Communist Party but who severed all connections prior to October 4, 1953, must "show that such membership has been terminated in good faith."

In the case of new employees, it is required that such matters be cleared prior to initial appointment.

In order that such situations may be handled with maximum discretion and projection to the individual concerned, any candidate who is faced with the problem of properly executing the enclosed statement is requested to place the matter before me personally on a confidential basis with the assurance that any further action on the matter will be only with the candidate's concurrence.

The enclosed statement is intended to make certain that all new employees have had an opportunity to familiarize themselves with some of the basic legal requirements for employment in the University and may certify to the fact that they meet such qualifications. Please sign it and

Assistant Vice President

return it to the Dean of the institution at which your appointment is being considered.

J. Lawrence Murray
Secretary of the University
and
Acting Chief Administrative Officer

[fol. 301]

PLAINTIFF'S EXHIBIT 13

(Letterhead of State University of New York,
Albany, New York)

January 17, 1964

Raymond G. Hunt, Ph.D.

Chairman, Committee on Academic Freedom

and Tenure, AAUP

205 Townsend Hall

State University at Buffalo

Buffalo, New York 14214

Dear Dr. Hunt:

This is in answer to your request for information as to the position of State University of New York with respect to the Feinberg Law (Education Law, Section 3022, as amended).

The board of trustees on May 10, 1956, established an ad hoc committee by Resolution 56-47, as reported on pages 98-99, of *Minutes of Meetings of the Board of Trustees, 1956*, verifax copy attached, marked Exhibit A. The resolution was prefaced by introductory comment, as reported in the minutes, that "The Chairman (Mr. Moore) stated that he believed this was a matter of great importance . . ."

The ad hoc committee on security regulations in recruitment of academic personnel reported to the board, as noted in the minutes of October 11, 1956 (page 163, *ibid.* verifax

copy attached, marked Exhibit B) and the board of trustees by Resolution 56-98 adopted a Procedure on New Academic Appointments. This procedure, as adopted, constituted an attachment which is not reproduced in the printed volume of the minutes. A carbon copy of the official attachment which is on file with the minutes at the offices of the board of trustees is enclosed herewith, as Exhibit C.

The minutes observe, at page 163, that the "procedure conformed to the procedure followed by the Board of Higher Education of the City of New York," and that the chairman of the ad hoc committee of the trustees "stated that he believed it was desirable for the two boards administering public institutions of higher education in New York State to have similar procedures in this matter."

The University's procedure, as it appears in Exhibit C hereto, was transmitted to chief administrative officers by memorandum from President Carlson dated April 24, 1957, copy attached as Exhibit D.

[fol. 302] State University's position in the matter of academic freedom is clear, and has been stated with vigor, as for example in the recent matter involving Mr. Aptheker.

State University's responsibility to comply fully with the Laws of New York State is also clear. The 1956 procedure has been found satisfactory. It is evident that the board of trustees recognizes its responsibility both to the principles of academic freedom and to the administration of proper and reasonable procedures to insure that no subversives are employed.

I will be pleased to meet with your committee for further discussion of this matter, if you wish, and for this purpose I could come to Buffalo on any date during the week of January 20-24.

Very truly yours,

/s/ D. S. PRICE

David S. Price

Assistant Vice President

Enclosures:

Exhibits A to D, as identified
in body of letter.

cc/ President Furnas—SUNY at Buffalo

Mr. J. L. Murray

Mr. John C. Crary, Jr., Esq.

[fol. 303]

EXHIBIT A TO LETTER

3.3 *Orange County Community College Budget Adjustment*

Mr. Greenman stated that on April 11, 1955 the Board of Trustees of Orange County Community College had approved a revision in the 1954-55 operational budget of that Institute because of unanticipated increases in enrollment which necessitated the expansion of faculty and purchase of additional instructional supplies. He noted that through an oversight State University was not notified of this action, but that the matter was brought to the attention of State University by the Department of Audit and Control of the State of New York. He stated that the staff had examined the proposed change and that the Committee believed it was justified.

Upon motion of Mr. Greenman, seconded by Mr. Hausman, it was unanimously:

Resolved that an increase in the operational budget of Orange County Community College from \$230,000 to \$334,550 for the period September 1, 1954 to August 31, 1955 be, and hereby is, approved (56-46)

4. REPORT OF THE PRESIDENT

4.1 *Security Clearance for Faculty Appointees*

The President noted that he had distributed to the Board memoranda relative to the requirements of the Feinberg Law concerning the recruitment of personnel.

The Chairman stated that he believed this was a matter of great importance and that an *ad hoc* committee of the Board should study this matter.

Upon motion of Mr. Greenman, seconded by Mrs. Donnelly, it was unanimously:

Resolved that the Chairman is hereby authorized to appoint an *ad hoc* Committee on Security Regulations in Recruitment of Academic Personnel (56-47)

The Chairman stated that he was asking Mr. Garside to serve as Chairman of the Committee with Dr. Murray and Mr. Scheiberling as the other members.

4.2 Dormitory Fee and Refund Schedule

The President stated that since the State University has now taken over operation of the dormitories it would be necessary for the Board to authorize him to establish rental and board charges and a refund policy. He stated that it was his intention to continue the schedule of rents and the policy on refunds which were in effect when the dormitories were operated by the Dormitory Authority.

Upon motion of Mr. Goetz, seconded by Mr. Hausman, it was unanimously:

Resolved that Resolution 56-12 concerning board and room charges at the Maritime College be, and hereby is, repealed, and that the President be, and hereby is, authorized as follows:

1. To fix such a schedule of rents payable by students at student housing facilities leased or owned by the State of New York or State University, as will pay all costs required by law to be met from such rental income; to establish the time and method of payment of such charges; and to determine rental refund policies.
2. To fix such a schedule of board charges or combined board and room charges as will pay all costs re-

quired by law to be met from such income funds and to determine appropriate refund policies. Such authority may be assigned to the chief administrative officer of an institution subject to such regulation as the President shall establish. (56-48)

4.3 *Facilities for Long Island*

The President stated that the Division of the Budget had informed him that money would be made available to the State University for the purpose of planning and conducting studies relative to portions of the State University program for Long Island which had been approved by the Board of Regents.

[fol. 304]

EXHIBIT B TO LETTER

closing of Hermann M. Biggs Memorial Hospital to transfer to available openings at the State Colleges at Cornell and Alfred without losing credit for their years of State service.

Upon motion of Mr. Garside, seconded by Mrs. Donnelly, it was unanimously

Resolved that a bill be sponsored at the 1957 session of the Legislature to give service credit for salary purposes to former State civil service employees in allocated positions appointed to positions in the non-professional services at the New York State Colleges administered by Cornell and Alfred Universities under the supervision of the State University. (56-97)

5. REPORT OF THE *AD HOC* COMMITTEE ON SECURITY REGULATIONS IN RECRUITMENT OF ACADEMIC PERSONNEL

Mr. Garside reported that the Committee was prepared to recommend a new procedure for compliance with the Feinberg Law (Education Law § 3022).

Mr. Garside read the proposed procedure to the Board (Attachment B). He noted that this procedure conformed to the procedure followed by the Board of Higher Education of the City of New York, and he stated that he believed it was desirable for the two Boards administering public institutions of higher education in New York State to have similar procedures in this matter.

After some discussion upon motion of Mr. Garside, seconded by Mrs. Donnelly, it was unanimously:

Resolved that effective October 11, 1956 all new academic appointments to any unit of the State University of New York shall be made in accordance with the Procedure on New Academic Appointments incorporated into these minutes as Attachment B. (56-98)

The Chairman discharged the Committee with thanks.

[fol. 305]

EXHIBIT C TO LETTER

Attachment B

Procedure on New Academic Appointments

1. A prospective candidate will be required to set forth the name and address of his present employer and his immediate supervisor there. The candidate should also set forth the name and address and immediate supervisor of his past employers, leaving no gaps in time.
2. Letters of recommendation should be sought from the present or past employers inquiring, among other things, as to the qualities of the candidate's citizenship and personality.
3. The chief administrative officer having interviewed a prospective candidate, reviewed his or her qualifications and consulted with the appropriate Department or Division Chairman, comes to the point of readiness to make a specific recommendation of appointment.

4. The chief administrative officer then asks the candidate to read a copy of the "Regents Rules on Subversive Activities" together with the attached letter from the President of the University and the attached Certificate to be executed by the candidate.

5. The chief administrative officer transmits to the President his recommendations for appointment together with the following statement:

"Upon inquiry I find no reason to believe that
 does not meet the requirements of Education Law, § 3022 (The Feinberg Law) and of the Regents Rules pertaining thereto.

.....
 (Signature) "

[fol. 306] The chief administrative officer also transmits the Certificate executed by the candidate, or if the candidate desires to see the President prior to executing the Certificate, a statement to that effect.

6. In the event the President interviews the candidate, the President will reduce the substance of the interview to writing.

7. The information obtained concerning any candidate will be transmitted to the President by the chief administrative officer with his recommendation for appointment and, in the case of appointments required to be made by the Board of Trustees, will be transmitted to the Board by the President with his recommendation.

[fol. 307]

ATTACHMENT TO EXHIBIT C**Form of President's Letter**.....
(Date)

Dear:

The accompanying publication entitled "Regents Rules on Subversive Activities" contains those sections of the State Education Law which deal with the matter of subversive activities together with the Rules established by the Regents in accordance therewith.

You will note that while both the Law and regulations are very specifically directed toward the elimination and non-appointment of "Communists" from or to our teaching ranks, they also set up safeguards in terms of definitions and procedures, intended to protect the civil rights of the individual.

The regulations provide among other things that a person who was a member of the Communist Party but who severed all connections prior to October 4, 1953, must "show that such membership has been terminated in good faith".

In the case of new employees, it is required that such matters be cleared prior to initial appointment.

In order that such situations may be handled with maximum discretion and protection to the individual concerned, any candidate who is faced with the problem of properly executing the enclosed statement is requested to place the matter before me personally on a confidential basis with the assurance that any further action on the matter will be only with the candidate's concurrence.

The enclosed statement is intended to make certain that all new employees have had an opportunity to familiarize themselves with some of the basic legal requirements for

Date:

employment in the University and may certify to the fact that they meet such qualifications. Please sign it and return it to

(Chief Administrative Officer)

Cordially yours,

(Date)

[fol. 308]

ATTACHMENT TO EXHIBIT C

Form of Certificate

.....
(Name of Institution)

CERTIFICATE

Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof cannot be employed by the State University.

Anyone who was previously a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof is directed to confer with the President before signing this certificate.

• • • • •
This is to certify that I have read the publication of the University of the State of New York, 1955, entitled "Regents Rules on Subversive Activities" together with the instructions set forth above and understand that these rules and regulations as well as the laws cited therein are part of the terms of my employment. I further certify that I am not now a member of the Communist Party and that if I have ever been a member of the Communist Party I have communicated that fact to the President of the State University of New York.

Date:

.....

[fol. 309]

EXHIBIT D TO LETTER**STATE UNIVERSITY OF NEW YORK****ALBANY 1****Office of the President****April 24, 1957****MEMORANDUM****To: Chief Administrative Officers****Re: Procedure on New Academic Appointments**

Under separate cover there are being forwarded to you copies of the uniform procedure prescribed by the Board of Trustees to be followed in making new academic appointments for the purpose of insuring continued and full compliance with the requirements of Education Law Section 3022, known as the Feinberg Law.

The Feinberg Law (Education Law § 3022) was designed to provide more effective means of carrying out the provisions of existing prohibitions against the employment of subversive persons in publicly supported educational institutions. It provides for the disqualification or removal, among others, of the faculty members and all other personnel and employees of any institution of higher education owned and operated by the State who violate the provisions of Education Law § 3021 or who are ineligible for appointment to, or retention in, their employment on any of the grounds set forth in Civil Service Law § 12-a. Section 3021 provides for removal of such employees for treasonable or seditious words or acts while holding their positions. The Civil Service Law provision disqualifies such persons for appointment or retention if they wilfully and deliberately advocate, advise or teach the doctrine that the Government of the United States or of any state or of any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means. Included in the prohibited acts are the compilation or dissemination of docu-

ments advocating, advising or teaching such doctrine and organizing or becoming a member of any society or group of persons which teaches or advocates such doctrines. These provisions have been held to furnish a constitutionally sufficient definition of what constitutes a subversive person.

The Feinberg Law reiterates the disqualification of subversive persons for employment in educational institutions and also provides that membership in subversive organizations, as listed by the Regents after inquiry, shall be *prima facie* evidence of disqualification for employment in the public schools. Its provisions have been held constitutional (*Adler v. Board of Education*, 342 U. S. 485).

[fol. 310] The Regents have listed the Communist Party of the United States and the Communist Party of the State of New York as subversive organizations. In making that finding, the Regents said:

"The Feinberg Law (Chap. 360, Laws 1949) is not a license for 'witch hunting,' for a finding of guilt by association, for thought control, for impairment of academic freedom nor for any infringement of constitutional rights."

It is only persons who are subversive as defined in the statutes who are ineligible for employment in public educational institutions. It is our duty, however, to take appropriate steps to prevent the appointment or retention of such persons.

As you know, we have complied with those provisions of the statute prohibiting the continued employment of subversive persons by annually having each of you make due inquiry to determine whether there is any reason to believe that any of the faculty members or other employees at your respective institutions are subversive as specified in the applicable statutes and by certifying the results of your findings to the Board of Regents.

The new procedure has been devised to establish a uniform, university-wide, method of meeting the requirements

of the law with respect to new appointments. It is hoped that it will aid in eliminating uncertainties as to the objectives and methods of the inquiry that must be made and assist in preventing both unwarranted intrusion on personal freedoms and employment of subversives.

The principal source of information to be secured, aside from personal interview, is from present and past employers and immediate supervisors. Inquiry is made of those sources, in any event, as to professional and personal qualifications, and with it should be combined a request for information from which you can reach an informed conclusion as to whether an applicant is a subversive person within the meaning of the statutes above discussed.

The proposed appointment must be found to comply with the requirements of the Feinberg Law in addition to other relevant qualifications. The requirement that the candidate read the "Regents' Rules on Subversive Activities" which are to be delivered to him with the prescribed letter signed by me is to familiarize him with these legal requirements of [fol. 311] his employment and the opportunity for conference with me in case of question as to the certificate of the candidate protects him from unfair implications. His own certificate records his acknowledgment of the requirements and his own representation that he meets them.

I will be glad to consult with any of you who may encounter particular problems in the application of the procedure. I believe the uniform procedure will assure our compliance with the law without unnecessary difficulty for you or for prospective appointees.

Sincerely,

/s/ WILLIAM S. CARLSON
William S. Carlson

[fol. 312]

DEFENDANTS' EXHIBIT 2

[Stamp—Personnel Office—May 21 1963—State University
of New York]

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

== **THE STATE CAMPUS • 1220 WASHINGTON AVENUE** ==

ALBANY 1, NEW YORK

COMMISSION

H. ELIOT KAPLAN

PRESIDENT

WILLIAM J. MURRAY

ADMINISTRATIVE DIRECTOR

ALEXANDER A. FALK

MARY GOODE KRONE

May 20, 1963

Mr. David Price
Director of Personnel
State University of New York
8 Thurlow Terrace
Albany, New York

Dear Dave:

Your letter of May 1st to President Kaplan was discussed at length at the meeting of the Civil Service Commission on May 8. Many of the matters to which you referred are considered administrative and, therefore, not the direct concern of the Civil Service Commission but rather that of the Department. However, this letter attempts to convey the views both of the Commission and the Department regarding your proposals.

The Civil Service Commission reaffirmed its determination made in January of this year that librarian positions

in the State University are in the classified service. With the exceptions stated at that time, it believes that these positions should be in the competitive class.

In the course of the discussion which ensued among the two members of the Commission present (President Kaplan is, as you know, in the hospital) and the members of the staff, the following comments were made concerning your letter:

(1) The objections which you take to the State salary and classification plan are not unique to the State University. Almost any department head can—and many have—urge that the problems of his particular agency are unique and require special classification or salary treatment. As an old classification man, I am sure you would accept the validity of this statement. Modifications within the existing classification and salary plan, e.g., the creation of intermediate classes if needed, can be taken up with the Classification and Compensation Division, and the Director of that division indicated that arrangements could be made to establish different classes in this field for State University if the classes could be distinguished one from the other with clarity and if the class distinctions were based upon material rather than minor differences.

The other statements which you make regarding the qualifications of individuals, flexibility for initial hiring, etc., are also desired by most appointing officers. As you know, certain relief can be obtained in good cases but the full flexibility which State University appears to desire is not easily obtained within the framework of a standardized system designed to control job classification and, in the long run, State expenditures. Librarians are not "professional" to a greater degree than doctors, lawyers, engineers, accountants, etc. If we assume that the professional aspirations of every group are to be accommodated, it would only be a matter of time until the civil service of the State was reduced to a residue of clerical and possibly investiga-

[fol. 313] tional positions. Even the investigators think of themselves as professionals nowadays.

I am sure it is unnecessary for me in the light of your long experience to belabor this point; but from the standpoint of this Department it is very difficult for us to single out a profession or group of professionals and treat them differently in terms of recruitment and compensation than we would other equally or better qualified professionals. There are very few people, especially among the professional groups, who wish to take examinations. Insofar as academic status is concerned, we think from a variety of evidence that we receive that anyone with a remote claim would like to have academic status. But we cannot agree that proper merit system recruitment is irreconcilable with the maintenance of good standards for librarians or other professionals in the colleges. Even if we did, the Constitution and the laws of the State would direct otherwise.

(2) Coming now to your suggestions regarding an interim solution to cover the problems in the academic year 1963-64:

(a) Your suggestion No. 1 has in general been done. If there are exceptions, I believe arrangements can be made to implement this suggestion.

(b) It seems appropriate to leave unchanged, for the time being at least, all existing competitive class positions of Assistant Librarian, SG-14, and Senior Librarian, SG-18. We are not certain which positions you are referring to in the latter half of your sentence but if these positions have been officially recognized by the Commission as unclassified, there would appear to be no reason for changing them at this time.

(c) As to your suggestion No. 3, much discussion was engendered. Frankly, we were unable to under-

stand your reasoning. Our Counsel pointed out that Section 355-a of the Education Law gives the educational authorities the power, with the approval of the Budget Director, to classify *faculty* positions. These are positions which are in the unclassified service within the definition of the Civil Service Law. We think that your argument begs the question in that you assume that certain positions are in the unclassified service and, therefore, under the jurisdiction of your agency for classification purposes. We are unable to accept in many cases the conclusion that these are teaching positions and, therefore, in the unclassified service.

- (d) Item No. 4 in your letter proposes two alternatives to take care of the situation pending what you call "resolution of the longer range problem." We are agreeable to treating the positions as being in the competitive class and allowing appointments to be made pursuant to Section 64-3 of the Civil Service Law for such period of time as is reasonably necessary to complete a classification survey. I was asked to advise you that we would hope that this survey can be "accomplished with dispatch." It seems to all of us that many of the problems which confront you now are aggravated by the fact that we have not come to grips with the classification of many of [fol. 314] the positions in the State University even though these positions have existed for a long time. We are willing to share some of the blame for this but we think it is by no means one-sided. We are convinced that further delay in squarely facing up to the problems of classifying your positions and identifying those which properly belong in the unclassified service will further exacerbate an already difficult situation.

The Division of Classification and Compensation stands ready to work actively with you in classifying positions throughout the University including these librarian positions. Our Examinations Division, and especially the Recruitment Bureau of that Division, will also cooperate most actively in facilitating your efforts to hire good librarians during the next year. We strongly urge that during this interim period while appointments are being processed on a temporary basis that steps be taken to put this whole process on a more orderly basis for the future. You have asserted previously that modifications of our traditional examining processes worked very well in recruiting librarians. We are only in the inception of rapid recruitment programs of all sorts and certainly we are most anxious to assist you in this field where recruitment will be difficult no matter how it is done or who does it.

(e) We see no problem in terms of applying the provisions of the Attendance Rules to employees whose status in the classified service is formalized for the first time. Under the Attendance Rules prior State service counts in determining vacation earning rate. The rate of earning would be the same as if the employee had always been recognized as being in the classified service. It is also subject to the same limitations on total accumulation, i.e., 30 days vacation and 150 days sick leave.

(f) For the reasons noted above and for others which can be cited when we come to confer on this matter, we cannot agree to the deferment of a position classification study of positions which you refer to as "previously unclassified." You are, of course, at liberty to introduce such legis-

lation as your Board would deem appropriate but we see no advantage to deferment even if these positions were eventually to be taken out of the classified service. It is never certain that legislation can be obtained on any subject. It is also possible that if a survey could be made and the results deemed practicable by you, you might find it unnecessary to seek legislation. In any event, we have a responsibility now which we feel should not be deferred to an indefinite future. In our estimation it has already been deferred too long and steps should be taken this year to deal with these positions in what we believe to be the manner required by law.

As soon as possible we would appreciate the opportunity to sit down and talk this whole matter out with you and seek a basis for getting on with the solution of our mutual problems.

Very truly yours,

/s/ W. J. MURRAY
W. J. Murray
Administrative Director

[fol. 315]

DEFENDANTS' EXHIBIT 3

January 21, 1963

Mr. David Price
Director of Personnel
State University of New York
8 Thurlow Terrace
Albany, New York

Dear Mr. Price:

The State Civil Service Commission at its meeting on January 15, 1963 considered your proposal to declare Librarian positions in the unclassified service.

ALBANY

THE UNIVERSITY OF THE STATE OF NEW YORK PRESS

1959

W120-20-10000-1-01

The Commission did not approve designation of these positions in the unclassified service, but did approve exempt classification of the top Librarian of each of the colleges and voted to keep all other Librarian positions in the competitive class of the classified service.

A resolution is being forward to the Governor and you will be informed of his action.

Very truly yours,

W. J. Murray
Administrative Director

WJM:cd

As soon as possible we would appreciate the opportunity to sit down and talk this whole matter out with you and seek a basis for getting on with the solution of our mutual problems.

Very truly yours,

W. J. Murray
Administrative Director

Enclosed in this letter are two copies of the report of the Commission on the State University of New York Library System, dated January 15, 1953.

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[fol. 316]

EXHIBIT "7" TO STIPULATION OF FACT

The University of the State of New York

The State Education Department

Regents Rules

on

Subversive Activities

ALBANY

THE UNIVERSITY OF THE STATE OF NEW YORK PRESS

1959

THE UNIVERSITY OF THE STATE OF NEW YORK

Regents of the University

With years when terms expire

1969	JOHN F. BROSNAN, A.M., LL.B., J.D., LL.D., D.C.L., D.C.S., Pd.D., Chancellor	- - - - -	New York
1968	EDGAR W. COUPER, A.B., LL.D., Vice Chancellor	- - -	Binghamton
1963	MRS. CAROLINE WERNER GANNETT, LL.D., L.H.D., D.H.	- - -	Rochester
1961	DOMINICK F. MAURILLO, A.B., M.D., LL.D., Sc.D.	- -	Brooklyn
1964	ALEXANDER J. ALLAN, JR., LL.D., Litt.D.	- - - - -	Troy
1967	THAD L. COLLUM, C.E.	- - - - -	Syracuse
1966	GEORGE L. HUBBELL, JR., A.B., LL.B., LL.D.	- - - - -	Garden City
1960	CHARLES W. MILLARD, JR., A.B.	- - - - -	Buffalo
1965	CHESTER H. LANG, A.B., LL.D.	- - - - -	Schenectady
1970	EVERETT J. PENNY, B.C.S., D.C.S.	- - - - -	White Plains
1972	CARL H. PFORZHEIMER, JR., A.B., M.B.A.	- - - - -	Purchase
1962	EDWARD M. M. WARBURG, B.S., L.H.D.	- - - - -	New York
1971	J. CARLTON CORWITH, B.S.	- - - - -	Water Mill

President of the University and Commissioner of Education

JAMES E. ALLEN, JR., Ed.M., Ed.D., LL.D., Litt.D., Pd.D., L.H.D.

Deputy Commissioner of Education

EWALD B. NYQUIST, B.S., LL.D., Pd.D., L.H.D.

Counsel

CHARLES A. BRIND, LL.B., LL.D.

Division of Law

JOHN P. JEHU, LL.B., J.U.D., Director

ELIZABETH M. EASTMAN

GEORGE B. FARRINGTON, A.B., LL.B.

FOREWORD

Section 3022 of the Education Law requires the Board of Regents to "adopt, promulgate, and enforce rules and regulations for the disqualification or removal of superintendents of schools, teachers or employees in the public schools in any city or school district of the state and the faculty members and all other personnel and employees of any college or other institution of higher education owned and operated by the state or any subdivision thereof who violate the provisions of section three thousand twenty-one of this article or who are ineligible for appointment to or retention in any office or position in such public schools or such institutions of higher education on any of the grounds set forth in section twelve-a of the civil service law." The sections of the law define certain types of subversive activity, and make mandatory the dismissal of school officials, teachers, or other employees who engage in such activity.

Inquiries with respect to the administration of the Regents Rules should be addressed to the Office of Counsel, State Education Department, Albany 1, N. Y.

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[193.101]

RULES OF THE BOARD OF REGENTS

(Adopted July 15, 1949)

ARTICLE XVIII

SUBVERSIVE ACTIVITIES

Section 244. Disqualification or removal of superintendents, teachers and other employees.

1 The school authorities of each school district shall take all necessary action to put into effect the following procedures for disqualification or removal of superintendents, teachers or other employees who violate the provisions of section 3021 of the Education Law or section 12-a* of the Civil Service Law.

a Prior to the appointment of any superintendent, teacher or employee, the nominating official, in addition to making due inquiry as to the candidate's academic record, professional training, experience and personal qualities, shall inquire of prior employers, and such other persons as may be in a position to furnish pertinent information, as to whether the candidate is known to have violated the aforesaid statutory provisions, including the provisions with respect to membership in organizations listed by the Board of Regents as subversive in accordance with paragraph 2 hereof. No person who is found to have violated the said statutory provisions shall be eligible for employment.

b The school authorities shall require one or more of the officials in their employ, whom they shall designate for such purpose, to submit to them in writing not later than October 31, 1949, and not later than September 30th of each school year thereafter, a report on each teacher or other employee. Such report shall either (1) state that there is no evidence indicating that such teacher or other employee has violated the statutory provisions herein referred to, including the provisions with respect to membership in organizations listed by the Regents as subversive in accordance with paragraph 2 hereof; or (2) where there is evidence indicating a violation of said statutory provisions, including membership in such a subversive organization,

* Now section 105.

recommend that action be taken to dismiss such teacher or other employe, on the ground of a specified violation or violations of the law.

c The school authorities shall themselves prepare such reports on the superintendent of schools and such other officials as may be directly responsible to them, including the officials designated by them in accordance with subdivision b of this paragraph.

d The school authorities shall proceed as promptly as possible, and in any event within 90 days after the submission of the recommendations required in subdivision b of this paragraph, either to prefer formal charges against superintendents, teachers or other employes for whom the evidence justifies such action, or to reject the recommendations for such action.

e Following the determination required in subdivision d of this paragraph, the school authorities shall immediately institute proceedings for the dismissal of superintendents, teachers or other employes in those cases in which in their judgment the evidence indicates violation of the statutory provisions herein referred to. In proceedings against persons serving on probation or those having tenure, the appropriate statutory procedure for dismissal shall be followed. In proceedings against persons serving under contract and not under the provisions of a tenure law, the school authorities shall conduct such hearings on charges as they deem the exigencies warrant, before taking final action on dismissal. In all cases all rights to a fair trial, representation by counsel and appeal or court review as provided by statute or the Constitution shall be scrupulously observed.

2 Pursuant to chapter 360 of the Laws of 1949, the Board of Regents will issue a list, which may be amended and revised from time to time, of organizations which the Board finds to be subversive in that they advocate, advise, teach or embrace the doctrine that the Government of the United States, or of any state or of any political subdivision thereof, shall be overthrown or overturned by force, violence or any unlawful means, or that they advocate, advise, teach or embrace the duty, necessity or propriety of adopting any such doctrine, as set forth in section 12-a* of the Civil Service Law. Evidence of membership in any organization so listed on or after the tenth day subsequent to the date of official promulgation of such list shall constitute *prima facie* evidence of disqualification for appointment to or retention of any office or position in the school system.

* Now section 105.

[fol. 322]

[1898-1901]

Evidence of membership in such an organization prior to said day shall be presumptive evidence that membership has continued, in the absence of a showing that such membership has been terminated in good faith.

3 On or before the first day of December of each year, the school authorities of each school district shall render to the Commissioner of Education a full report, officially adopted by the school authorities and signed by their presiding officer, of the measures taken by them for the enforcement of these regulations during the calendar year ending on the 31st day of October preceding. Such report shall include a statement as to (a) the total number of superintendents, teachers and other employes in the employ of the school district; (b) the number of superintendents, teachers and other employes as to whom the school authorities and/or the officials designated by them have reported that there is no evidence indicating that such employes have violated the statutory provisions herein referred to, including the provisions with respect to membership in organizations listed by the Regents as subversive; and (c) the number of superintendents, teachers and other employes in whose cases the school authorities and/or the officials designated by them have recommended that action be taken to dismiss the employes in question, on the grounds of specified violations of the law or evidence of membership in a subversive organization. Such report shall also include, for the group listed under (c) above, a statement of (d) the number of cases in which charges have been or are to be preferred and the status or final disposition of each of these cases; (e) the number of cases in which the school authorities have concluded that the evidence reported by the designated officials does not warrant the preferring of charges; and (f) the number of cases in which the school authorities have not determined, as of October 31st of the school year in question, on the action to be taken.

4 Immediately upon the finding by school authorities that any person is disqualified for appointment or retention in employment under these regulations, said school authorities shall report to the Commissioner of Education the name of such person and the evidence supporting his disqualification, including a transcript of the official records of hearings on charges, if any, which have been conducted.

[fol. 324]

[1958 fol.]

COMMISSIONER'S MEMORANDUM**ON****ADMINISTRATION OF REGENTS RULES****RELATING TO SUBVERSIVE ACTIVITIES**

Boards of education and school trustees have always been under obligation to provide such supervision of teachers and other employees as will insure sound teaching and a wholesome school environment. Chapter 360 of the Laws of 1949 (commonly referred to as the Feinberg Act) imposes on school authorities no new supervisory responsibility. The new legislation has the effect simply of directing attention to a special supervisory need — namely, the need “to protect the children in our State from . . . subversive influence” — which the Legislature finds to be particularly acute at the present time, and of requiring the Board of Regents to prescribe procedures under which special attention will be given to this need.

The rules established by the Regents in response to the direction of the Legislature are largely self-explanatory. The rules provide systematic procedures for identifying and removing from the school system disloyal teachers or other employees.

On four major points certain supplementary comments may be appropriate. These points are (1) the responsibility of the officials designated by school authorities for reporting on teachers and other employees, (2) the types of conduct which may properly be considered by school authorities as subversive within the meaning of section 3021 of the Education Law and section 12-a* of the Civil Service Law, (3) the rights of a person accused of subversive activity to a hearing on charges, and (4) the listing of organizations found by the Regents to be subversive within the meaning of the law.

1. Reports by school officials. The officials designated by school authorities to report on teachers and other employees will face a two-fold duty. It will be their responsibility, on the one hand, to help the school authorities rid the school system of persons who “use their office or position to advocate and teach subversive doctrines.” On the other hand, it will be their responsibility so to

* Now section 105.

conduct themselves and their inquiries as to protect and reassure teachers who are not subversive.

School authorities will need to select with great care the officials who are to be entrusted with this duty.* The officials chosen should be persons of wide acquaintance within the school system, sound judgment in matters of personal relationships, and sufficient maturity and professional experience to have won the respect of the other local officials, teachers and school employees and of the general public. Furthermore, these officials must be close enough to the work of the classroom teacher so that they will have a real understanding of the methods of presentation that may make the difference between teaching which is subversive in intent and teaching which has neither a subversive purpose nor subversive results.

In preparing the reports which they are to render to the school authorities, the designated officials will of course use their own acquaintance with the teachers for whom they are responsible as an immediate guide. If these officials are in fact well acquainted with the individual teachers on whom they are to report, they will already be in possession of sufficient facts either to substantiate their judgment of a teacher's loyalty or (in the case of teachers about whom they have some question) to indicate the need for further evidence. In weighing such further evidence the officials should be guided by the considerations presented in section 2 of this memorandum. Any evidence submitted to such officials which reflects adversely on a teacher, they are bound to examine promptly, dispassionately and thoroughly.

The designated officials should bear in mind for their own guidance, and where appropriate should bring to the attention of others, the fact that while statements made in connection with an official charge of disloyalty are legally privileged, no privilege attaches to gossip and the circulation of rumor. In this latter connection attention is called to the *Matter of Mencher v. Chesney*, 297 N.Y. 94 (101) in which the Court of Appeals stated: "The courts have held that a false charge that one is a Communist is basis for a libel action."

2. Subversive activity. The Education Law and the Civil Service Law make it entirely clear that a teacher or other employee who "wilfully and deliberately advocates, advises or teaches the

* School authorities in districts employing fewer than eight teachers will ordinarily find it advantageous to designate one or more of their own number as the official or officials to make the required reports. When there is only a single trustee in such a district, he or she will presumably make all the reports required by the Regents Rules.

[fol. 326]

[1928.10.1]

doctrine that the government of the United States or of any State or of any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means," or who participates in the preparation, publication or distribution of written or printed matter advocating such a doctrine or advising its adoption, or who "organizes or helps to organize or becomes a member of any society or group of persons" which teaches or advocates such a doctrine, or who utters "any treasonable or seditious word or words" or does "any treasonable or seditious act or acts," is engaging in subversive activity and is subject to dismissal. It should be noted that this activity need not be merely by word of mouth. The writing of articles, the distribution of pamphlets, the endorsement of speeches made or articles written or acts performed ^{and} ^{constituted} ^{by men} ~~others~~, all may constitute subversive activity. ~~Nor need such activity be confined to the classroom. "Treasonable" or subversive acts or statements outside the school are as much a basis for dismissal as are similar activities in school or in the presence of school children.~~

It must be borne in mind that teachers who are honestly concerned to help their pupils to become constructive citizens are likely to raise many questions and make many suggestions about possible improvements in the American form of government and American institutions, which cannot in any just sense be construed as subversive. Especially if these teachers are teachers of history, civics or government, they are likely also to bring to their pupils' attention materials dealing with foreign peoples and foreign governments (including the people and government of Russia), not for the purpose of advocating changes in our own government but for the purpose of acquainting their pupils with the kinds of government under which other peoples live.

Moreover, teachers who take full advantage of their own privileges as citizens may raise questions and make suggestions outside their classrooms, about improvements in our form of government. In addition, they may quite legitimately inform themselves fully, and enter into discussions with other people, about forms of government different from our own.

School authorities and the officials designated in accordance with the Regents Rules must be alert to guard such teachers against unjust accusation and condemnation. In particular, they should reject hearsay statements, or irresponsible and uncorroborated statements, about what a teacher has said or done, either in school or outside. They should examine an accused teacher's statements, writing or action in their context, and not in isolated fragments. They

must insist on evidence, and not mere opinion, as a basis for any action which they may take.

But the statutes and the Regents Rules make it clear that it is a primary duty of the school authorities in each school district to take positive action to eliminate from the school system any teacher in whose case there is evidence that he is guilty of subversive activity. School authorities are under obligation to proceed immediately and conclusively in every such case.

3. The preferring of charges. Neither section 12-a* of the Civil Service Law nor sections 3021 and 3022 of the Education Law modifies in any way the rights accorded to teachers under the tenure laws.

Teachers serving on tenure cannot be dismissed, whether for subversive activities or for any other cause, without opportunity for a hearing, of which a stenographic record must be made. Written charges must be served. Accused teachers must be given opportunity to appear in person or by counsel, before either a duly appointed trial committee or the full board of education, as the law may provide. Teachers have the right to subpoena witnesses (including their accusers), to present witnesses in their own behalf, and to cross-examine opposing witnesses. They have also the full right of appeal.

4. List of subversive organizations. The Regents have published a list of organizations which, in accordance with section 3022 of the Education Law, they have found to be subversive in that the said organizations "advocate, advise, teach or embrace the doctrine that the government of the United States or of any State or of any political subdivision thereof shall be overthrown or overturned by force, violence or any unlawful means, or that they advocate, advise, teach or embrace the duty, necessity or propriety of adopting any such doctrine." School authorities are responsible for proceeding with all diligence in the cases of teachers whose acts other than membership in the listed organizations fall within the purview of the statutes.

In the reports required as of October 31, school authorities will be expected to indicate the measures which they have put into effect prior, as well as subsequent, to the publication of the Regents list.

* Now section 105.

THE UNIVERSITY OF THE STATE OF NEW YORK

Organizations Listed by the Board of Regents of The University of the State of New York as Subversive Pursuant to Section 3022 of the Education Law

<i>Name of Organization</i>	<i>Date of Listing</i>
Communist Party of the United States of America	September 24, 1953
Communist Party of the State of New York	September 24, 1953

SECTION 1 OF

CHAPTER 360, LAWS OF 1949

Section 1. The legislature hereby finds and declares that there is common report that members of subversive groups, and particularly of the communist party and certain of its affiliated organizations, have infiltrated into public employment in the public schools of the state. This has occurred and continues despite the existence of statutes designed to prevent the appointment to or the retention in employment in public office and particularly in the public schools of the state of members of any organization which teaches or advocates that the government of the United States or of any state or of any political subdivision thereof shall be overthrown by force or violence or by any unlawful means. The consequence of any such infiltration into the public schools is that subversive propaganda can be disseminated among children of tender years by those who teach them and to whom the children look for guidance, authority and leadership. The legislature finds that members of such groups frequently use their office or position to advocate and teach subversive doctrines. The legislature finds that members of such groups are frequently bound by oath, agreement, pledge or understanding to follow, advocate and teach a prescribed party line or group dogma or doctrine without regard to truth or free inquiry. The legislature finds that such dissemination of propaganda may be and frequently is sufficiently subtle to escape detection in the classroom. It is difficult, therefore, to measure the menace of such infiltration in the schools by conduct in the classroom. The legislature further finds and declares that in order to protect the children in our state from such subversive influence it is essential that the laws prohibiting persons who are members of subversive groups, such as the communist party and its affiliated organizations, from obtaining or retaining employment in the public schools, be rigorously enforced. The legislature deplors the failure heretofore to prevent such infiltration which threatens dangerously to become a commonplace in our schools. To this end, the board of regents, which is charged primarily with the responsibility of supervising the public school systems in the state, should be admonished and directed to take affirmative action to meet this grave menace and to report thereon regularly to the state legislature.

[fol. 330]

[188.1.1]

EDUCATION LAW

§ 3021. **Removal of superintendents, teachers and employees for treasonable or seditious acts or utterances.** A person employed as superintendent of schools, teacher or employee in the public schools, in any city or school district of the state, shall be removed from such position for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position.

§ 3022. **Elimination of subversive persons from the public school system.** 1. The board of regents shall adopt, promulgate, and enforce rules and regulations for the disqualification or removal of superintendents of schools, teachers or employees in the public schools in any city or school district of the state and the faculty members and all other personnel and employees of any college or other institution of higher education owned and operated by the state or any subdivision thereof who violate the provisions of section three thousand twenty-one of this article or who are ineligible for appointment to or retention in any office or position in such public schools or such institutions of higher education on any of the grounds set forth in section twelve-a* of the civil service law and shall provide therein appropriate methods and procedure for the enforcement of such sections of this article and the civil service law.

2. The board of regents shall, after inquiry, and after such notice and hearing as may be appropriate, make a listing of organizations which it finds to be subversive in that they advocate, advise, teach or embrace the doctrine that the government of the United States or of any state or of any political subdivision thereof shall be overthrown or overturned by force, violence or any unlawful means, or that they advocate, advise, teach or embrace the duty, necessity or propriety of adopting any such doctrine, as set forth in section twelve-a* of the civil service law. Such listings may be amended and revised from time to time. The board, in making such inquiry, may utilize any similar listings or designations promulgated by any federal agency or authority authorized by federal law, regulation or executive order, and for the purposes of such inquiry, the board may request and receive from such federal agencies or authorities any supporting material or evidence that may be made available to it. The board of regents shall provide

* Now section 105.

[fol. 331]

[1888-1891]

in the rules and regulations required by subdivision one hereof that membership in any such organization included in such listing made by it shall constitute prima facie evidence of disqualification for appointment to or retention in any office or position in the public schools of the state.

3. The board of regents shall annually, on or before the fifteenth day of February, by separate report, render to the legislature, a full statement of measures taken by it for the enforcement of such provisions of law and to require compliance therewith. Such reports shall contain a description of surveys made by the board of regents, from time to time, as may be appropriate, to ascertain the extent to which such provisions of law have been enforced in the city and school districts of the state.

CIVIL SERVICE LAW

§ 105. Subversive activities; disqualification. 1. Ineligibility of persons advocating overthrow of government by force or unlawful means. No person shall be appointed to any office or position in the service of the state or of any civil division thereof, nor shall any person employed in any such office or position be continued in such employment, nor shall any person be employed in the public service as superintendent, principal or teacher in a public school or academy or in a state college or any other state educational institution who:

(a) by word of mouth or writing wilfully and deliberately advocates, advises or teaches the doctrine that the government of the United States or of any state or of any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means; or

(b) prints, publishes, edits, issues or sells, any book, paper, document or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that the government of the United States or of any state or of any political subdivision thereof should be overthrown by force, violence or any unlawful means, and who advocates, advises, teaches, or embraces the duty, necessity or propriety of adopting the doctrine contained therein; or

(c) organizes or helps to organize or becomes a member of any society or group of persons which teaches or advocates that the government of the United States or of any state or of any political subdivision thereof shall be overthrown by force or violence, or by any unlawful means.

2. A person dismissed or declared ineligible pursuant to this section may within four months of such dismissal or declaration of ineligibility be entitled to petition for an order to show cause signed by a justice of the supreme court, why a hearing on such charges should not be had. Until the final judgment on said hearing is entered, the order to show cause shall stay the effect of any order of dismissal or ineligibility based on the provisions of this section; provided, however, that during such stay a person so dismissed shall be suspended without pay, and if the final determination shall be in his favor he shall be restored to his position with pay for the period of such suspension less the amount of compensation which he may

[fol. 333]

[1900-1901]

have earned in any other employment or occupation and any unemployment insurance benefits he may have received during such period. The hearing shall consist of the taking of testimony in open court with opportunity for cross examination. The burden of sustaining the validity of the order of dismissal or ineligibility by a fair preponderance of the credible evidence shall be upon the person making such dismissal or order of ineligibility.

3. Removal for treasonable or seditious acts or utterances. A person in the civil service of the state or of any civil division thereof shall be removable therefrom for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position. For the purpose of this subdivision, a treasonable word or act shall mean "treason", as defined in the penal law; a seditious word or act shall mean "criminal anarchy" as defined in the penal law.

[fol. 334]

[CCC fol.]

No. 5738

THE UNIVERSITY OF THE STATE OF NEW YORK**The State Department of Education****Before the Commissioner****IN THE MATTER**

of the

Appeal of Irving Adler from certain action and threatened action of the Board of Education of the City of New York and William Jansen, as Superintendent of Schools of the City of New York, in applying a so-called "Statement of Policy" adopted by the Board of Education of the City of New York on December 6, 1951.

Witt & Cammer Attorneys for Appellant

Denis M. Hurley, Corporation Counsel ... Attorney for Respondent

September 26, 1952

**NEW YORK CITY—BOARD OF EDUCATION (Power and Duties)—
TEACHERS (Tenure and Dismissal) (Membership in Organizations)**

Appellant when asked whether he is or was a member of Communist Party refused to answer and sought to restrain Board of Education from proceeding further—Appeal dismissed—Board has legal right to seek information from employees whether or not they belong to organization which may be subversive—unless there appears a good and sufficient reason for refusal to answer, Board has legal right to dismiss teacher—no provision in Feinberg Law or Rules of Board of Regents which would prevent Board of Education of City of New York from independently establishing list of its own of organizations which advocate overthrow of the Government by force or from questioning any teacher as to membership in any organization which it suspects is in such category.

Wilson, Commissioner. Upon the direction of the Superintendent of Schools of the City of New York, the appellant herein who has been for some time a teacher in the schools of the City of New York, has been asked whether he is or has been a member of the Communist Party. He has refused to answer and seeks to restrain the Board of Education from proceeding further.

While the petition and briefs present several phases of this matter, fundamentally there seem to be but three issues involved, 1) has the Board of Education the right to ask him whether or not he is or has been a member of the Communist Party, 2) is he obliged to answer under penalty of dismissal, and 3) what effect, if any, does the Feinberg Law of this State (Chap. 360, L. 1949) have upon the matter.

[fol. 335]

[100.101]

The first question, I think, has been settled by the courts and presents no particular problem. There seems to be no doubt that the Board of Education has a legal right to seek information from its employees as to whether or not they belong to an organization which may be subversive. In *Garner v. Los Angeles Board*, 341 U. S. 716 (1951) the United States Supreme Court upheld the constitutionality of an ordinance of the City of Los Angeles requiring its employees to state by affidavit whether or not they were or had been members of the Communist Party or of the Communist Political Association. The Court said (at p. 720) :

" We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment. The affidavit requirement is valid."

The answer to the second question flows from the answer to the first. If the Board has the legal authority to ask its employees whether they are members of an organization held to be subversive, it must follow that the Board is entitled to an answer. Unless there appears a good and sufficient reason for refusal to answer, and no such reason occurs to me presently, the Board has the legal right to dismiss. The Board must, of course, follow the statutory requirements in respect to removal proceedings before so doing.

As to the third question, in my opinion there is no provision contained in the so-called Feinberg Law or in the Rules of the Board of Regents which would prevent the Board of Education of the City of New York from independently establishing a list of its own of organizations which advocate the overthrow of the Government by force, or from questioning any teacher as to his or her membership in any organization which it suspects is in such category.

THE APPEAL IS DISMISSED.

NOTE. An attempted review of this decision of the Commissioner of Education before the courts was unsuccessful: *Adler et al. vs Wilson et al.*, 203 Misc. 456; affd. 282 App. Div. 418; motion for leave to appeal denied, 306 N.Y. 981.

[fol. 336]

THE UNIVERSITY OF THE STATE OF NEW YORK

The State Department of Education

Before the Commissioner

IN THE MATTER

of the

Appeals of Benjamin H. Baronofsky, Henry Danielowitz, Mildred Grossman, Maurice Kurzman and Abraham Squire from the action of the Board of Education of the City School District of the City of New York

Shapiro, Rabinowitz &

Boudin Attorneys for Appellants, Benjamin H. Baronofsky, Henry Danielowitz, Mildred Grossman and Maurice Kurzman.

Harold I. Cammer Attorney for Appellant, Abraham Squire.

Peter Campbell Brown .. Corporation Counsel, Attorney for Respondent, Daniel T. Scannell, Helen R. Cassidy, of Counsel.

July 5, 1955

NEW YORK CITY—BOARD OF EDUCATION (Powers and Duties)— TEACHERS (Membership in Subversive Organizations) (Tenure and Dismissal) (Discipline)

Legal right of Board of Education to inquire of teaching staff as to membership in Communist Party settled in *Adler et al. v. Wilson*—Case also determined that refusal to answer was insubordination and subjected teacher to discipline—Rules of Regents specified that prior membership in Communist Party creates presumption of continued membership unless refuted by accused—Board, in dismissing appellants who refused to answer questions concerning their possible membership in Communist Party, acted within sphere of authority—Trials of appellants held at time that Adler case had been appealed and Board was stayed from further action as to parties in that proceeding but stay did not apply to appellants—Appellants refused to answer questions which court has now held proper—Requirement to answer is absolute—However, Board is without power to require teacher to answer questions relating to possible knowledge of other persons who may have been associated with Communist Party—Appeal dismissed

Wilson, Commissioner. The appellants herein have been employed for a varying number of years as teachers in the public school system of the City of New York. Each of them has been charged with insubordination and conduct unbecoming a teacher by the Board of

[fol. 337]

Education of the City of New York upon the recommendation of the Superintendent of Schools.

They were accorded a hearing before a trial committee of the Board of Education. Such trial committee found them guilty as charged and so recommended to the Board of Education. They were promptly dismissed by the Board.

The gravamen of the charges consisted of the refusal of each of the appellants to answer certain questions put to them by a duly authorized representative of the Superintendent of Schools concerning their possible membership in the Communist Party. Mildred Grossman stated that she was not a member of the Party but refused to answer any questions as to prior membership or Party activity prior to the date of the enactment of the Feinberg Law (April, 1949). The balance of the appellants refused to answer any questions concerning membership in the Communist Party either present or past. Subsequently the appellants were given another opportunity to reconsider their position and in an interview by the deputy or assistant superintendent of schools, each of the five maintained their prior position except Maurice Kurzman who then stated that he was not at that time a member of the Communist Party but he still refused to make any statement concerning any possible prior membership.

At the trial of these charges before the trial examiner, each continued to maintain his position except Abraham Squire, who requested the trial examiner for an opportunity to continue his interview before the representative of the Superintendent of Schools aforesaid, with the understanding that the testimony would be confidential, which request was granted. So a month after such event, such an interview took place.

That the Board of Education has the legal right to inquire of members of the teaching staff as to their membership in the Communist Party, was settled in the Adler case, (*Adler et al. v. Wilson*, 203 Misc. 456; affd. 282 App. Div. 418; Motion for leave to appeal denied, 306 N. Y. 981.) and confirmed by the Regents by their determination dated September 24, 1953 in listing the Communist Party as a subversive organization within the meaning of the Feinberg Law. Such case also determined that refusal to answer was insubordination and subjected the teacher to discipline. Furthermore, the rules of the Regents adopted in connection with the Feinberg Law specified that prior membership in the Communist Party creates a presumption of continued membership unless refuted by the accused. Consequently, it is quite clear that the Board, in dismissing these appellants, acted within the sphere of its authority as heretofore determined.

[fol. 338]

The only remaining question involved in this proceeding is whether the claim on the part of the appellants that they were refusing to answer until the final test of the Adler case in the courts was completed is a basis for reversal, and in the case of Squire, whether the facts discussed by him with Mr. Saul Moskoff in the last interview aforesaid, provided similar basis for reversal.

At the time of these trials it is true that the Adler case had been appealed to the Appellate Division, Third Department, and that the Board of Education had been stayed from further action as to the parties in that proceeding. Said stay did not apply to these appellants. Consequently, if they refused to answer even part of the questions which they were required to answer, hoping for a successful outcome of the Adler case and the board had dismissed them because of their refusal to answer before the final decision in such case, they might have been entitled to reinstatement, with back pay, if the Adler case had been reversed. However, this was the chance they took in maintaining such position and the chance that the board took in disciplining them, should it turn out later that the basis for the discipline was illegal.

It appearing that all of these appellants had refused to answer questions which the court has now held proper I find no basis of arbitrary or illegal conduct on the part of such board as would warrant a reversal of its determination by me. A change of position after their original refusal would only be mitigating circumstances which the board could take into consideration in fixing the penalty. It was not obligated to do so as the appellants' original refusal constituted insubordination *ab initio*.

One other matter should also be disposed of. The appellant, Benjamin H. Baronofsky, claimed that his refusal to answer was premised upon a fear that the board, if he confessed prior membership in the Communist Party, would inquire as to his knowledge of other persons who may have been members of that party to his embarrassment. The requirement to answer is absolute, and excuses such as this cannot be construed as grounds for avoidance of the penalty for refusal to answer. However, at the same time I should point out that in my opinion a board of education is without power to require a teacher to answer questions relating to his possible knowledge of other persons who may have been associated with the Communist Party.

THE APPEAL IS DISMISSED.

[fol. 339]

EXHIBIT "8" TO STIPULATION OF FACT

Attachment B

Procedure on New Academic Appointments

1. A prospective candidate will be required to set forth the name and address of his present employer and his immediate supervisor there. The candidate should also set forth the name and address and immediate supervisor of his past employers, leaving no gaps in time.

2. Letters of recommendation should be sought from the present or past employers inquiring, among other things, as to the qualities of the candidate's citizenship and personality.

3. The chief administrative officer having interviewed a prospective candidate, reviewed his or her qualifications and consulted with the appropriate Department or Division Chairman, comes to the point of readiness to make a specific recommendation of appointment.

4. The chief administrative officer then asks the candidate to read a copy of the "Regents Rules on Subversive Activities" together with the attached letter from the President of the University and the attached Certificate to be executed by the candidate.

5. The chief administrative officer transmits to the President his recommendations for appointment together with the following statement:

"Upon inquiry I find no reason to believe that.....
..... does not meet the requirements of Education Law, § 3022 (The Feinberg Law) and of the Regents Rules pertaining thereto.

....."
(Signature)

The chief administrative officer also transmits the Certificate executed by the candidate, or if the candidate de-

sires to see the President prior to executing the Certificate, a statement to that effect:

[fol. 340] 6. In the event the President interviews the candidate, the President will reduce the substance of the interview to writing.

7. The information obtained concerning any candidate will be transmitted to the President by the chief administrative officer with his recommendation for appointment and, in the case of appointments required to be made by the Board of Trustees, will be transmitted to the Board by the President with his recommendation.

[fol. 341]

Form of President's Letter

(Date)

Dear _____:

The accompanying publication entitled "Regents Rules on Subversive Activities" contains those sections of the State Education Law which deal with the matter of subversive activities together with the Rules established by the Regents in accordance therewith.

You will note that while both the Law and regulations are very specifically directed toward the elimination and non-appointment of "Communists" from or to our teaching ranks, they also set up safeguards in terms of definitions and procedures, intended to protect the civil rights of the individual.

The regulations provide among other things that a person who was a member of the Communist party but who severed all connections prior to October 4, 1953, must "show that such membership has been terminated in good faith."

In the case of new employees, it is required that such matters be cleared prior to initial appointment.

In order that such situations may be handled with maximum discretion and protection to the individual concerned, any candidate who is faced with the problem of properly executing the enclosed statement is requested to place the matter before me personally on a confidential basis with the assurance that any further action on the matter will be only with the candidate's concurrence.

The enclosed statement is intended to make certain that all new employees have had an opportunity to familiarize themselves with some of the basic legal requirements for employment in the University and may certify to the fact that they meet such qualifications. Please sign it and return it to

(Chief Administrative Officer)

Cordially yours,

[fol. 342]

Form of Certificate

.....
(Name of Institution)

CERTIFICATE

Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof cannot be employed by the State University.

Anyone who was previously a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof is directed to confer with the president before signing this certificate.

.....

This is to certify that I have read the publication of the University of the State of New York, 1955, entitled "Re-

gents Rules on Subversive Activities" together with the instructions set forth above and understand that these rules and regulations as well as the laws cited therein are part of the terms of my employment. I further certify that I am not now a member of the Communist Party and that if I have ever been a member of the Communist Party I have communicated that fact to the President of the State University of New York.

Date: _____

[fol. 343]

EXHIBIT "9" TO STIPULATION OF FACT

CERTIFICATE

Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof can not be employed by the State University.

Anyone who was previously a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof is directed to confer with the President before signing this certificate.

This is to certify that I have read the publication of the University of the State of New York, 1959, entitled "Regents Rules on Subversive Activities" together with the instructions set forth above and understand that these rules and regulations as presented to me, as well as the laws cited therein, except for the Education Commissioner's memorandum, are part of the terms of my employment. I further certify that I am not now a member of the Communist Party of the State of New York or of the United States, and that if I have ever been a member of the Com-

munist Party of the State of New York or of the United States, I have communicated that fact to the President of the State University of New York.

..... Date Signature

[fol. 344]

EXHIBIT "10" TO STIPULATION OF FACT

STATE UNIVERSITY OF NEW YORK

THURLOW TERRACE

ALBANY, NEW YORK

(Emblem)

SECRETARY OF THE UNIVERSITY

J. LAWRENCE MURRAY

May 29, 1964

Dr. Peter Nicholls
State University of New York
at Buffalo

Department of Biochemistry
Capen Hall
The Circle
Buffalo 14, New York

Dear Dr. Nicholls:

This is written in the light of our conference in April, following my letter of March 20, in the hope that it may enable a resolution of the problem on both our parts. As we have sought to explain, the disqualification for employment imposed by the New York statutes and rules pursuant thereto is grounded on advocacy of the doctrine that the existing government should be overturned by force and violence. No disability is imposed on the basis of political belief or action by peaceful political process. Neither is there any restraint on full freedom of intellectual inquiry in the realm of political ideas. It is because of the element

of knowing and wilfull advocacy of violent overthrow that validity of the law as respects employees of the educational system of the state has been sustained by the Supreme Court of the United States under the Constitution.

The significance of Communist Party membership lies in the procedures of the Feinberg Law (Education Law §3022) for implementing Civil Service Law Section 105. The Regents were directed, after inquiry on notice and hearing, to list organizations found to be subversive in that they advocate that the government should be violently overthrown and membership in such organization was made *prima facie* evidence of disqualification. It is a rebuttable presumption. The statute has been construed as requiring knowledge of the unlawful purpose of the organization and full judicial hearing is accorded to one dismissed or found ineligible on such ground. The Communist Party of the State of New York and the Communist Party of the United States have been so listed.

[fol. 345] It was my understanding that you would be willing to sign the prescribed certificate if it were indicated that the portion relating to the Regents rules did not include the Commissioner of Education's memorandum, which is printed in the booklet containing the rules, and specified the organizations listed by the Regents. I am willing to accept a certificate with these additions inasmuch as the Commissioner's memorandum is not a part of the rules and the presumption attaches only to the listed organizations. A form of certificate in accordance therewith is enclosed. I hope that you will find it possible to execute this certificate so that the matter may be resolved.

Sincerely,

/s/ J. LAWRENCE MURRAY
Secretary and Acting
Chief Administrative Officer

[fol. 346]

CERTIFICATE

Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof can not be employed by the State University.

Anyone who was previously a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof is directed to confer with the President before signing this certificate.

This is to certify that I have read the publication of the University of the State of New York, 1959, entitled "Regents Rules on Subversive Activities" together with the instructions set forth above and understand that these rules and regulations are presented to me, as well as the laws cited therein, except for the Education Commissioner's memorandum, is part of the terms of my employment. I further certify that I am not now a member of the Communist Party of the State of New York or of the United States, and that if I have ever been a member of the Communist Party of the State of New York or of the United States, I have communicated that fact to the President of the State University of New York.

Date

Signature

[fol. 347]

EXHIBIT "11" TO STIPULATION OF FACT

STATE UNIVERSITY OF NEW YORK

ALBANY 1, N. Y.

OFFICE OF THE PRESIDENT

March 20, 1964

Dr. George Hochfield
State University of New York
Buffalo, New York

Dear Sir:

This is addressed to you as one of the few faculty members at the State University of New York at Buffalo having continuing or term appointments who have not yet complied with the procedures prescribed by the State University trustees to carry out their obligations under Section 105 of the Civil Service Law, as implemented by Section 3022 of the Education Law known as the Feinberg Law. It has been asserted that such non-compliance, in some cases at least, is based on disagreement as a matter of principle with the statutory provisions. Accordingly this is to explain the necessity and purpose of the prescribed procedure and why I must specifically direct you to comply with it.

Section 105 of the Civil Service Law (formerly Section 12-a) has since 1940 made ineligible for appointment or continuance in public employ in the State of New York any person who wilfully and deliberately advocates the overthrow of the government by force and violence or who organizes or becomes a member of any society or group which teaches or advocates the overthrow of government by such means. The Feinberg Law was specifically enacted in 1949 to provide appropriate means for enforcing this provision of the Civil Service Law with respect to the public schools, and was extended in 1953 to employees of public higher educational institutions. It provided that the Board of Regents should make a listing, after inquiry,

notice of hearing, of organizations found to be subversive as set forth in the Civil Service Law. On September 24, 1953 the Regents listed the Communist Party of the United States of America and the Communist Party of the State of New York as subversive pursuant to Section 3022 of the Education Law. Section 105 of the Civil Service Law was subsequently amended to make membership in these organizations *prima facie* evidence of disqualification for public employment in the State.

The constitutionality of both Section 105 of the Civil Service Law and of the Feinberg Law was sustained by the United States Supreme Court in *Adler v. Board of Education*, 342 U. S. 485. That case specifically upheld the right of the State to inquire into past or present association with organizations found to teach and advocate the overthrow of government by force and violence as bearing on fitness [fol. 348] for employment in the educational system. It was said that school authorities have the right and duty to screen officials, teachers and employees as to their fitness. A finding of membership does not automatically result in removal. That can only follow in proceedings appropriate to the tenure of the employee involved and any dismissal pursuant to Section 105 is by subdivision 2 of that section made subject to full judicial hearing in which the burden is on the removing official to sustain the validity of his order.

It will be seen, however, that the State University trustees, as the governing body of institutions of higher education owned and operated by the State, have a statutory duty not to appoint or continue in employment or to permit the appointment or continuance in employment of persons who knowingly support the purposes of organizations which teach and advocate the overthrow of government by force. In carrying out that duty they properly may and must inquire into association with organizations found to be subversive in order to determine qualification for employment. Any refusal by an employee to furnish information as to

his own affiliation with such organizations would constitute insubordination (*Matter of Adler v. Wilson*, 282 App. Div. 418, lv. to app. den. 306 N. Y. 981). With respect to faculty employees, whose qualifications are not certified by the Civil Service Department, appointees are asked to certify that they are not presently members of the Communist Party and that if they ever have been such members they have communicated that fact to the President of State University. This procedure has been followed as the most fair and forthright way of making inquiry regarding a qualification for appointment or retention fixed by law. It asks no more than that the employee himself recognize and establish such qualification and furnishes opportunity through conference with me to protect him from unfair or unwarranted implications from past association with an organization found to be subversive.

I must, therefore, hereby specifically direct you either to execute the certificate heretofore furnished to you or the attached certificate in compliance with its terms and deliver it to President Furnas or, if you cannot properly execute it, to place the matter before me in a personal conference. Your failure either to sign and deliver the certificate as directed or to request such conference with me within ten days after delivery of this letter to you will be deemed to be a wilful refusal to comply with my direction warranting the initiation of proceedings for your dismissal for such cause.

Sincerely,

/s/ J. LAWRENCE MURRAY

J. Lawrence Murray

Secretary of the University

an Acting Chief Administrative Officer

attachment

[fol. 349]

EXHIBIT "12" TO STIPULATION OF FACT

STATE UNIVERSITY OF NEW YORK

THURLOW TERRACE

ALBANY, NEW YORK

(Emblem)

SECRETARY OF THE UNIVERSITY

J. LAWRENCE MURRAY

May 28, 1964

Dr. Newton Garver
 Department of Philosophy
 State University of New York
 at Buffalo
 Diefendorf Hall
 The Loop
 Buffalo 14, New York

Dear Dr. Garver:

Your response of March 26, to my letter of March 20, enclosed a certificate acknowledging that Section 3022 of the Education Law and the rules promulgated under it are part of the terms of your employment by State University. You have, however, crossed out that part of the certificate relating to membership in the Communist Party. This, you indicate, is based on your unwillingness to testify as to the political or religious affiliations or beliefs of yourself or any other faculty member or to participate in any manner in the enforcement of the statute.

Let me first emphasize that the certificate asks nothing about anyone's religious beliefs or associations and asks nothing about the Communist Party affiliation of anyone but yourself. Secondly, as I have heretofore sought to explain, the disqualification for employment of Civil Service Law Section 105, as implemented by Education Law Section 3022, is grounded on deliberate advocacy of violent

and unlawful overthrow of government. Communist Party membership is made presumptive evidence of such disqualification because the Party after inquiry, on notice and hearing, has been found to advocate the doctrine that the government should be overthrown by force and violence. The test is not political belief, nor is there any inhibition on free intellectual inquiry in the realm of political ideas and theory.

[fol. 350] You express the hope that it was not the intention of my directive that you be required to participate in administration of the statute by executing the certificate in the form presented to you. It was necessary for me in the exercise of my own responsibilities, which I am duty bound to carry out, to direct that you either execute the certificate or communicate with me. You have not sought any interview with me, nor have you executed the certificate in compliance with its terms.

As I have indicated, the State statutes and regulations upon which I must act do not impose any disqualification either because of political beliefs or because of action by peaceful political process, nor do they limit full freedom of academic inquiry in the area of political ideas. It is only advocacy of the unlawful use of force and violence to destroy the existing government upon which disqualification is based. The statutory presumption of disqualification because of Communist Party membership has been upheld as a reasonable and valid inference by the Supreme Court of the United States. Hence it is necessary and proper to inquire about such membership in connection with employment by State University, which is the purpose of the certificate in question. Even such membership is, however, only *prima facie* evidence of disqualification and there is a statutory right to a full judicial hearing for anyone disqualified on subversive grounds. Unless you are now willing to execute and return the certificate on the basis of the explanation of its nature and purpose, I must accept your letter as a refusal to comply with the plain

terms of my direction of March 20 and submit the matter for initiation of dismissal proceedings based on such refusal.

Sincerely,

/s/ J. LAWRENCE MURRAY
Secretary and Acting
Chief Administrative Officer

[fol. 351]

EXHIBIT "13" TO STATEMENT OF FACT

STATE UNIVERSITY OF NEW YORK

THURLOW TERRACE

ALBANY, NEW YORK

(Emblem)

SECRETARY OF THE UNIVERSITY

J. LAWRENCE MURRAY

May 29, 1964

Dr. Ralph N. Maud

Assistant Professor of English

State University of New York at Buffalo

Crosby Hall—Library Circle

Buffalo 14, New York

Dear Dr. Maud:

I had hoped at our interview in February and in my subsequent letter of March 20, to be able to make clear that the statutes and rules, with which the University must comply, do not impose any limitation on free intellectual inquiry or base any employment disability on political belief or action by peaceful political process in accordance with such belief. It is advocacy of the doctrine that the existing government should be overthrown by force and violence which constitutes disqualifying subversive activity under the law. Under the Feinberg Law the Communist

Party of the State of New York and the United States have been listed by the Regents, after notice and hearing, as organizations which advocate such unlawful overthrow of the government and membership therein is made *prima facie* evidence of disqualification by law. It must be a membership with knowledge of the unlawful purpose of the Party and the presumption is rebuttable with full judicial hearing provided for one disqualified on such ground. Both the statutory qualification and the presumption have been held valid by the United States Supreme Court under the Constitution.

Unhappily you have thus far refused to execute the certificate required by the University in accordance with its terms and my direction. As an administrative officer of the State University I could not, in good conscience, retain that position and fail to carry out the duties I am sworn to execute to the best of my ability. While you sought to confer with me before my letter of March 20, it was not for the purpose of communicating facts to me which would enable you to execute the certificate in accordance with the statements made therein but only to state your disagreement with the requirement. Unless, on the basis of our discussion and the explanations I have sought to make, you are willing to sign the certificate, I can only treat your letter of March 16 as confirmation of your refusal to comply with the direction and am left with no alternative but to submit the matter for initiation of dismissal proceedings based on such refusal.

Sincerely,

/s/ J. LAWRENCE MURRAY
Secretary and Acting Chief
Administrative Officer

[fol. 352] **EXHIBIT "14" TO STATEMENT OF FACT**

STATE UNIVERSITY OF NEW YORK

THURLOW TERRACE

ALBANY, NEW YORK

(Emblem)

SECRETARY OF THE UNIVERSITY

J. LAWRENCE MURRAY

May 29, 1964

Mr. Harry Keyishian
Department of English
State University of New York
at Buffalo
Acheson 253
Buffalo 14, New York

Dear Mr. Keyishian:

I had hoped at our interview on April 7, following my letter of March 20, to be able to make clear that the statutes and rules, with which the University must comply, do not impose any limitation on free intellectual inquiry or base any employment disability on political belief or action by peaceful political process in accordance with such belief. It is advocacy of the doctrine that the existing government should be overthrown by force and violence which constitutes disqualifying subversive activity under the law. Under the Feinberg Law the Communist Party of the State of New York and the United States have been listed by the Regents, after notice and hearing, as organizations which advocate such unlawful overthrow of the government and membership therein is made *prima facie* evidence of disqualification by law. It must be a membership with knowledge of the unlawful purpose of the Party and the presumption is rebuttable with full judicial hearing provided

for one disqualified on such ground. Both the statutory qualification and the presumption have been held valid by the United States Supreme Court under the Constitution.

Unhappily you have thus far refused to execute the certificate required by the University in accordance with its terms and my direction. As an administrative officer of the State University I could not, in good conscience, retain that position and fail to carry out the duties I am sworn to execute to the best of my ability. While you sought a conference with me after my letter of March 20, it was not for the purpose of communicating facts to me which would enable you to execute the certificate in accordance with the statements made therein, but only to state your disagreement with the requirement. Unless on the basis of our discussion and the explanations I have sought to make you are willing to sign the certificate, I can only treat our conference as confirmation of your refusal to comply with the direction and am left with no alternative but to submit the matter for initiation of dismissal proceedings based on such refusal.

Sincerely,

/s/ J. LAWRENCE MURRAY

Secretary and Acting Chief
Administrative Officer

[fol. 354] **EXHIBIT "15" TO STATEMENT OF FACT**
STATE UNIVERSITY OF NEW YORK

THURLOW TERRACE
ALBANY, NEW YORK

(Emblem)

SECRETARY OF THE UNIVERSITY
J. LAWRENCE MURRAY

May 29, 1964

Dr. George Hochfield
Associate Professor of English
State University of New York at Buffalo
Crosby Hall—Library Circle
Buffalo 14, New York

Dear Dr. Hochfield:

I had hoped at our interview on April 3, following my letter of March 20, to be able to make clear that the statutes and rules, with which the University must comply, do not impose any limitation on free intellectual inquiry or base any employment disability on political belief or action by peaceful political process in accordance with such belief. It is advocacy of the doctrine that the existing government should be overthrown by force and violence which constitutes disqualifying subversive activity under the law. Under the Feinberg Law the Communist Party of the State of New York and the United States have been listed by the Regents, after notice and hearing, as organizations which advocate such unlawful overthrow of the government and membership therein is made *prima facie* evidence of disqualification by law. It must be a membership with knowledge of the unlawful purpose of the Party and the presumption is rebuttable with full judicial hearing provided for one disqualified on such ground. Both the statutory quali-

fication and the presumption have been held valid by the United States Supreme Court under the Constitution.

Unhappily you have thus far refused to execute the certificate required by the University in accordance with its terms and my direction. As an administrative officer of the State University I could not, in good conscience, retain that position and fail to carry out the duties I am sworn to execute to the best of my ability. While you sought a conference with me after my letter of March 20, it was not for the purpose of communicating facts to me which would enable you to execute the certificate in accordance with the statements made therein, but only to state your disagreement with the requirement. Unless on the basis of our discussion and the explanations I have sought to make you are willing to sign the certificate, I can only treat our conference as confirmation of your refusal to comply with the direction and am left with no alternative but to submit the matter for initiation of dismissal proceedings based on such refusal.

Sincerely,

/s/ J. LAWRENCE MURRAY
Secretary and Acting Chief
Administrative Officer

[fol. 355]

EXHIBIT "16" TO STATEMENT OF FACT

College of Arts and Sciences	Crosby Hall
STATE UNIVERSITY OF	Library Circle
NEW YORK AT BUFFALO	Buffalo, New York 14214
Formerly	Telephone 831-2317
The University of Buffalo,	Area Code 716
Founded 1846	
Department of English	

2 June 1964

J. Lawrence Murray
 Secretary and Acting Chief
 Administrative Officer
 State University of New York
 Albany
 New York

Dear Mr. Murray,

I received yesterday your letter of 29 May 1964.

I would like to correct the impression given by my letter of 26 March. In expressing my willingness to come to see you for another interview I considered that I had made a permissible response to your letter of March 20, and therefore have not been delinquent.

Further, I hear from Dr. Nicholls, with whom you have been in correspondence, that a new and proper Certificate has come into being. It seems unlikely that you can be considering dismissing a person for refusing to sign the old, improper Certificate.

Yours truly,

Ralph Maud
 Assistant Professor of English

[Handwritten notation—Dick, you already have this, I believe.—Ralph]

[fol. 356]

EXHIBIT "17" TO STATEMENT OF FACT

STATE UNIVERSITY OF NEW YORK

THURLOW TERRACE

ALBANY, NEW YORK

(Emblem)

SECRETARY OF THE UNIVERSITY

J. LAWRENCE MURRAY

June 5, 1964

Dr. Ralph N. Maud

Assistant Professor of English

State University of New York at Buffalo

Crosby Hall—Library Circle

Buffalo 14, New York

Dear Dr. Maud:

This is in reply to your letter of June 2 which indicates that you feel the form of certificate signed by Dr. Nicholls is proper. In accepting a certificate from Dr. Nicholls with the additions proposed by him, I did so on the ground that the Commissioner of Education's memorandum printed in the booklet containing the Regents rules is not itself a part of the rules and the organizations specified are those listed by the Regents to which the presumption flowing from membership attaches. I am enclosing a certificate in such form for your signature which I will be happy to accept as compliance with the requirements I must carry out.

Sincerely,

/s/ J. LAWRENCE MURRAY

J. Lawrence Murray

Secretary and Acting Chief
Administrative Officer

[fol. 357]

EXHIBIT "18" TO STATEMENT OF FACT

EXHIBIT

Resolved that Resolution 65-100 adopted May 13, 1965, be and the same hereby is, amended to read as follows:

Resolved that Resolution No. 56-98 adopted on October 11, 1956, incorporated into the Policies of the Board of Trustees as Section 3 of Title B of Article XI thereof, and the Procedure on New Academic Appointments therein referred to, be, and the same hereby are, *Rescinded*, and

Further Resolved that Title B of Article XI of the Policies of the Board of Trustees be amended by adding a new Section 3 thereto to read as follows:

§ 3. Procedure for appointments.

Before any initial appointment shall hereafter be made to any position certified to be in the professional service of the University pursuant to Section 35 of the Civil Service Law the officer authorized to make such appointment or to make the initial recommendation therefor shall send or give to the prospective appointee a statement prepared by the President concisely explaining the disqualification imposed by Section 105 of the Civil Service Law and by Section 3022 of the Education Law and the Rules of the Board of Regents thereunder, including the presumption of such disqualification by reason of membership in organizations listed by the Board of Regents. Such officer, in addition to due inquiry as to the candidate's record, professional training, experience and personal qualities, shall make or cause to be made such further inquiry as may be needed to satisfy him as to whether or not such candidate is disqualified under the provisions of such statute and rules. Should any question

arise in the course of such inquiry such candidate may request or such officer may require a personal interview. Refusal of a candidate to answer any question relevant to such inquiry by such officer shall be sufficient ground to refuse to make or recommend appointment. An appointment or recommendation for appointment shall constitute a certification by the appointing or recommending officer that due inquiry has been made and that he finds no reason to believe that the candidate is disqualified for the appointment.

Further Resolved that this resolution shall become effective July 1, 1965, provided, however, that this resolution shall become effective immediately with respect to appointments made or recommended prior to July 1, 1965 to take effect on or after that date.

[fol. 358] *Resolved* that any person presently employed or heretofore employed by the University who has failed to sign the certificate required by the Procedure on New Academic Appointments adopted on October 11, 1956, shall not be deemed disqualified or ineligible solely by reason of such failure, for appointment or reappointment in the professional service of the University in the manner provided in new Section 3 of Title B of Article XI of the Policies of the Board of Trustees as adopted by resolution this day; and

Further Resolved that any person presently employed by the University shall not be deemed ineligible or disqualified for continuance in his employment during the prescribed term thereof, nor be subject to charges of misconduct, solely by reason of such failure, provided he is found qualified for such continuance by the Chief Administrative officer of the institution at which he is employed in accordance with the procedures prescribed in said new Section 3 of Title B of Article XI of the Policies of the Board of Trustees.

[fol. 360]

[File endorsement omitted]

[fol. 361] **IN THE UNITED STATES DISTRICT COURT**
FOR THE WESTERN DISTRICT OF NEW YORK
Civil Action File No. 10,994

**HARRY KEYISHIAN, GEORGE HOCHFELD, NEWTON GARVER,
 RALPH N. MAUD, and GEORGE E. STARBUCK, Plaintiffs,**

—v.—

**BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF
 NEW YORK, BOARD OF TRUSTEES OF THE STATE UNIVERSITY
 OF NEW YORK, STATE UNIVERSITY OF NEW YORK AT BUF-
 FALO, SAMUEL B. GOULD, CLIFFORD C. FURNAS, J.
 LAWRENCE MURRAY, ARTHUR LEVITT, DEPARTMENT OF
 CIVIL SERVICE OF THE STATE OF NEW YORK, CIVIL SER-
 VICE COMMISSION OF THE STATE OF NEW YORK, MARY
 GOODE KRONE, and ALEXANDER A. FALK, Defendants.**

**Before: MOORE, U.S.C.J., BURKE, Ch.J. and HENDERSON,
 U.S.D.J.**

OPINION—January 5, 1966

Appearances:

**Richard Lipsitz, of Lipsitz, Green and Fahringer, Buf-
 falo, New York (Rosario J. DiLorenzo on the brief), for
 plaintiffs.**

**John C. Cray, Jr. (Richard A. Foster and David L.
 Segal on the brief), for defendants Board of Trustees—
 State University of New York, State University of New
 York at Buffalo, Clifford C. Furnas, Samuel B. Gould,
 and J. Lawrence Murray.**

**Ruth Kessler Toch (Louis J. Lefkowitz, Attorney Gen-
 eral of the State of New York, on the brief), for defendants
 Board of Regents of the University of the State of New**

York, Department of Civil Service of the State of New York, Civil Service Commission of the State of New York, Mary Goode Krone, and Alexander A. Falk.

[fol. 362] MOORE, C.J.

This suit challenges the constitutionality of Sections 3021 and 3022 of the New York Education Law, Section 105 of the New York Civil Service Law, Section 244 of Article XVIII of the Rules of the Board of Regents of the State of New York, and the procedures used under these various statutes and regulations. Section 105 of the Civil Service Law and Sections 3021 and 3022 of the Education Law, as they are now in effect, are set forth in the margin.¹

Section 244 of Article XVIII of the Rules of the Board of Regents, promulgated after the enactment of Section 3022 of the Education Law, provides that school authorities shall put into effect certain procedures for disqualification and removal of employees who violate Section 3021 of the Education Law or Section 105 of the Civil Service Law. Before appointment of an employee, the nominating official shall inquire of his former employers and of others whether he is known to have violated the statutory provisions, and no person found to have violated the statutes shall be eligible for employment. Each year school authorities shall prepare a report on each employee, stating whether there is any evidence, including membership in an organization listed as subversive by the Board of Regents, indicating that the employee has violated the statutes. If there is such evidence, the reporting official [fol. 363] is to recommend the employee's dismissal, and within 90 days after the recommendation has been submitted, the school authorities must either prefer formal charges or reject the recommendation. If charges are preferred against persons serving on probation or having tenure, statutory dismissal procedures shall be followed. "In proceedings against persons serving under contract and not under the provisions of a tenure law, the school authorities

shall conduct such hearings . . . as they deem the exigencies warrant, before taking final action on dismissal. In all cases, all rights to a fair trial, representation by counsel and appeal or court review as provided by statute or the Constitution shall be scrupulously observed."

The State University of New York at Buffalo, attempting to comply with the Regents' rules, distributed to all members of the academic staff a booklet containing the Regents' rules and the underlying statutes, and required each faculty member to sign a certificate (the "Feinberg certificate") declaring that he had read the Regents' rules; that the rules and the statutes cited therein constituted terms of his employment; and that he was not now a member of the Communist Party and if he ever had been, he had communicated that fact to the president of the university.

Four of the five plaintiffs in the present action—Keyishian, Hochfield, Garver, and Maud, all under term appointments to the academic staff of the University—declined to sign the certificates, and were notified that if they did not sign as requested their terms would not be renewed on grounds of insubordination. Keyishian's term has ended and his appointment has not been renewed. The terms of two of the other three have not expired and they remain in their former positions. They have been informed that dismissal proceedings will not be started against them until the validity of the statutes, rules, and procedures is determined in the present suit. Maud accepted a position after his term expired in September 1965, again subject to the determination of the present suit, but has resigned from the university.

The fifth plaintiff, Starbuck, was appointed on September 1, 1963, to a one-year term as a specialist in acquisitions for the library. After starting work he was required to fill out a form, one question of which asked: "Have you ever advised or taught or were you ever a member of any society or group of persons which taught or advocated

under the provisions of a tenure law, the school authorities

the doctrine that the government of the United States or of any political subdivision thereof should be overthrown or overturned by force, violence, or any unlawful means?" He refused to answer and was dismissed from his appointment on June 18, 1964.

On July 8, 1964, the plaintiffs brought a class action [fol. 365] against a large part of the educational hierarchy of the State of New York, seeking an injunction against enforcement of the civil statutes concerning employment of subversives and of the regulations and procedures used to implement those statutes. The District Court held that no substantial federal question was raised, and accordingly refused to refer the case to a three-judge district court. 233 F. Supp. 752 (W.D. N.Y., 1964). The Court of Appeals for the Second Circuit reversed and directed that the case be heard before a three-judge court. 345 F. 2d 236 (2 Cir., 1965).

I. *The Constitutionality of the State's Objective.*

The plaintiffs argue in part that the complex of laws, regulations, and procedures under attack has no constitutionally valid objective—that they infringe upon freedom of expression without being justified by any legitimate state interest.

The Supreme Court in the *Adler* case, considering statutes the predecessors of the ones now in question, described the importance of the state interest in preventing the use of the educational system as a platform for urging students to overthrow government by violent means:

A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has [fol. 366] a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to main-

tain the integrity of the schools as a part of ordered society, cannot be doubted.

Adler v. Board of Education, 342 U.S. 485, 493 (1952).

The Supreme Court has not changed its recognition of the importance of this state interest in recent cases. In 1958, it quoted the above language from *Adler* with approval, in upholding the dismissal for "incompetency" of a Pennsylvania school teacher who refused to answer a question as to his activities in the Communist Party. *Beilan v. Board of Public Education*, 357 U.S. 399 (1958). In *Barenblatt v. United States*, 360 U.S. 109 (1959), the Court upheld the contempt conviction of a former teaching fellow at the University of Michigan, based on his refusal to answer questions of a congressional committee as to his past and present membership in the Communist party. The Court indicated that Congress had a legitimate interest in "inquiring into the extent to which the Communist Party has succeeded in infiltrating into our universities . . . persons and groups committed to furthering the objective of overthrow." 360 U.S. at 129. In *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961), the Court struck down as unconstitutionally vague a Florida statute requiring state employees to swear that [fol. 367] they had never lent their "aid, support, advice, counsel, or influence to the Communist Party"; but the Court did not "question the power of a State to safeguard the public service from disloyalty." 368 U.S. at 288. Nor does the recent decision of *Baggett v. Bullitt*, 377 U.S. 360 (1964), cast any doubt upon the power of a state to act to prevent the incitement of violent overthrow on university campuses.

The plaintiffs argue that the legitimate state objective recognized by the Court in *Adler* is not present here, since the teachers here hold positions at universities rather than at public schools. The argument appears to be based upon the comparative maturity of mind of the university stu-

dent, which entitles him to the privilege of exposure to conflicting political philosophies. But as the American Association of University Professors wrote in their amicus brief in *Barenblatt, supra*, a case involving a university teacher, "The claims of academic freedom cannot be asserted unqualifiedly. The social interest it embodies is but one of a larger situation, within which the interest in national self-preservation . . . also prominently appear[s]." Brief, p. 24. It would not be constitutional to prevent the *teaching* of Communist philosophy at the university level; but it would be dangerously anomalous to proscribe the *advocacy* of violent overthrow of government in all parts of the United States, see *Dennis v. United States*, 341 U.S. 494 (1951), except in the breeding-grounds of the future leaders of the nation. The interest in national self-preservation—"the ultimate value of any society," *Dennis* at 509—applies to the university campus as well as to the rest of our society.

II. *The Constitutionality of the Means Used to Attain the State's Objective.*

The plaintiffs maintain that even if the statutes and regulations under attack assert a legitimate state objective, they do so in a manner which unduly restricts other interests protected by the Constitution. The plaintiffs invoke a variety of constitutional clauses in support of their position.

A. *The Ex Post Facto Clause.*

An ex post facto law is "one which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required." *Cummings v. Missouri*, 71 U.S. 277, 325-26 (1867).

In the present case, the plaintiffs either have been dismissed or are threatened with dismissal for failure to

answer questions put to them under procedures designed to implement §3022 of the Education Law, which was made applicable to colleges in 1953. Before being dismissed or threatened with dismissal, the plaintiffs were repeatedly told the purpose of the questions, the statutory basis for the questions, and the possibility that dismissal proceedings would be started if they failed to answer the questions. The proscription of their conduct preceded the conduct itself, so that the ex post facto clause does not apply. See *Garner v. Board of Public Works*, 341 U.S. 716, 721 (1951), in which the Court rejected an argument that dismissal of municipal employees for failure to take an oath was ex post facto punishment, with the observation that the activity covered by the oath had been proscribed years before the employees were asked to take the oath.

B. *The Bill of Attainder Clause.*

"Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment of them without a judicial trial are bills of attainder prohibited by the Constitution." *United States v. Lovett*, 328 U.S. 303, 315-16 (1946). The plaintiffs contend that Section 3022 of the Education Law, coupled with the Regents' regulations under that section and Section 105(1)(c) of the Civil Service Law, constitute a bill of attainder, since these provisions single out as ineligible for employment in state schools members of the Communist Party of New York and of the Communist Party of the United States. A similar argument was made and rejected in the *Adler* case.

The plaintiffs put particular reliance on *United States v. Brown*, 381 U.S. 437 (1965), in which the Court held unconstitutional as a bill of attainder a statute making it criminal for anyone "who is or has been a member of the Communist Party" to serve as an officer of a labor

union within five years of the termination of his membership in the Communist Party. However, the statute attacked in the *Brown* case differs fundamentally from the statutes and regulations challenged here in the nature of the part played by the legislature in determining the underlying facts from which adverse consequences would follow. Assuming without deciding that dismissal from state employment can constitute "punishment"—a question left open in *Garner*, 241 U.S. 716 at 721 (1951) and not touched upon in *Brown*—the bill of attainder clause only forbids "punishment" imposed by a legislature as a result of "trial by legislature." *Brown*, 381 U.S. at 442. It is the unfairness of trial by a large body "peculiarly susceptible to popular clamor," 1 Cooley, Constitutional Limitations, 536-37 (8th ed. 1927) that underlies the bill of attainder clause. The court in *Brown* faced a statute involving just such a "trial by legislature"—a statute which specified the Communist Party by name, and made it a crime—automatically and incontestably—for a Party member to hold union office.

[fol. 371] In the present case, disqualification from employment in the state schools did not follow automatically from a legislative determination that the Communist Party was a bad organization. Section 3022 of the Education Law provided that the Board of Regents shall, after full notice and hearing, make a list of organizations which it finds advocate the doctrine that government should be overthrown by force, violence, or other unlawful means. It was only after extensive hearings that the Board of Regents lists two organizations under Section 3022; the Communist Party of New York and the Communist Party of the United States. These determinations were subject to judicial review under Article 78 of the Civil Practice Act, now Article 78 of the Civil Practice Law and Rules. *Thompson v. Wallin*, 301 N.Y. 476, 493, 95 N.E. 2d 806, (1950), *aff'd sub nom. Adler v. Board of Education*, 342 U.S. 485 (1952).

Section 105(1)(c) of the Civil Service Law, which makes membership in either the Communist Party of New York

or that of the United States "prima facie evidence" of disqualification for the state civil service, was based not on an original determination by the state legislature of the aims of the Communist Party, but upon the findings of the Board of Regents under Section 3022 of the Education Law. The preamble to the amendment incorporating the reference to the two parties makes clear that the purpose of the reference was to bring Section 105 into harmony with the [fol. 372] determinations of the Board of Regents under Section 3022. N.Y. Sess. Laws 1958, c. 503, §1.²

Again unlike the statute struck down in *Brown*, Sections 105(1)(c) of the Civil Service Law and 3022 of the Education Law make membership in the Communist Party only "prima facie evidence of disqualification" from state employment. The presumption is rebuttable; at a hearing, the employee "may deny (a) membership; (b) that the organization advocates the overthrow of the government by force; and (c) that he has knowledge of such advocacy." *Lederman v. Board of Education*, 276 App. Div. 527, 530, 96 N.Y.S. 2d 466, 470 (2d Dept. 1950), *aff'd sub nom. Thompson v. Wallin*, 301 N.Y. 476, 95 N.E. 2d 806 (1950), *aff'd sub nom. Adler v. Board of Education*, 342 U.S. 485 (1952). As the New York Court of Appeals stated in *Thompson v. Wallin*:

The phrase "prima facie evidence of disqualification" . . . imports a hearing at which one who seeks appointment to or retention in a public school position shall be afforded an opportunity to present substantial evidence contrary to the prima facie evidence. . . . Once such contrary evidence has been received, however, the official who made the order of ineligibility has thereafter the burden of sustaining the validity of that order by a fair preponderance of the evidence.

301 N.Y. 476 at 494, 95 N.E. 2d 806 at 814-15. See also *Hughes v. Board of Higher Education*, 309 N.Y. 319, 130 N.E. 2d 638 (1955).

[fol. 373] The disqualification of a teacher under these laws, in short, is not the result of a "legislative trial". The legislature in the first instance—in enacting Section 3022 of the Education Law—did nothing more than, in the language of *Brown*, 381 U.S. at 450, "set forth a generally applicable rule" as to the characteristics of organizations, membership in which should be evidence of disqualification. The determination of what organizations possessed those characteristics was left to an administrative body, to be made after notice, hearing, and opportunity for judicial review. The case closely resembles *Communist Party v. Subversive Activities Control Board*, 367 U.S. 1 (1961), in which the Court, holding that the Subversive Activities Control Act of 1950 was not a bill of attainder, stressed the "crucial constitutional significance of what Congress did when it rejected the approach of outlawing the Party by name and accepted instead a statutory program regulating not enumerated organizations but designated activities," 367 U.S. at 84-85, and pointed out that the initial findings under the Act "must be made after full administrative hearing, subject to judicial review. . . ." *Id.* at 87.

If anything, the statutes now under attack are less like a bill of attainder than the act held constitutional in *Communist Party v. Subversive Activities Control Board*, since the New York statutes provide opportunity for hearing and [fol. 374] judicial review not only for the organizations listed, but also for their members. In short, in terms of a recent analysis of the history and purpose of the bill of attainder clause, the New York legislature here laid down "rules of general applicability", leaving "the job of application to other tribunals." Comment, *The Bounds of Legislative Specification: A Suggested Approach to the Bill of Attainder Clause*, 72 Yale L.J. 330, 347, 350 (1962).

C. *The Due Process Clause.*

Plaintiffs' principal challenge to the New York statutes and procedures is based on the protection afforded to free

speech by the First Amendment, applicable to the states under the Fourteenth Amendment. Plaintiffs maintain that the New York laws and procedures impinge upon the rights of freedom of speech, thought, and expression more than is necessary to protect the state from violent overthrow, both by being too broad and vague, and by imposing an unfair burden on those who may be adversely affected, requiring them to justify their conduct.

1. *Procedural Due Process and Speiser v. Randall.*

Plaintiffs' "burden of justification" argument rests in large part on *Speiser v. Randall*, 357 U.S. 513 (1958), in which the Court held to be against due process a California statute which required veterans to file oaths declaring that [fol. 375] they did not advocate the overthrow of government by force, violence, or other unlawful means, before they could receive a state tax exemption. The essence of the Court's opinion was that by putting the burden of taking the first step and of proving eligibility on the applicants, the statute made it more likely that the exemption would be denied in borderline cases, and therefore that "legitimate utterance will be penalized." 357 U.S. at 526. The Court distinguished the *Garner* and *Douds* cases, in which oaths were upheld as valid prerequisites to state employment and union office, by pointing out that those cases "concerned a limited class of persons in or aspiring to public positions by virtue of which they could, if evilly motivated, create serious danger to the public safety," *id.* at 527, and that in those cases persons by taking the oaths could retain their positions subject to further proceedings in which the government would have the burden of proof. The Court also distinguished the New York statutes upheld in *Adler*, on the grounds that under those statutes "public-school teachers could be dismissed on security grounds only after a hearing at which the official pressing the charges sustained his burden of proof by a fair preponderance of the evidence." 357 U.S. at 528 n.8.

Later decisions have made clear that *Speiser* does not create a rule of law that a potential suspect in an area [fol. 376] concerning freedom of speech must never be called upon to justify his conduct. *E.g.*, *Nelson v. County of Los Angeles*, 362 U.S. 1 (1960), upholding discharges of county employees based upon their refusal to answer questions concerning subversive activities put to them by a congressional subcommittee; *Konigsberg v. State Bar*, 366 U.S. 36 (1961) and *In re Anastaplo*, 366 U.S. 82 (1961), holding that admission to a state bar could be denied on the basis of an applicant's refusal to answer questions concerning Communist activities. Instead, *Speiser* holds that in a case concerning First Amendment freedoms, the burden of proof must rest upon the attacker as much as possible, consonant with the protection of the legitimate interest asserted by the attacker.

In the present case, the university requirement that all teachers sign "Feinberg certificates" may have raised problems under *Speiser*, although apparently the teachers could retain their positions by signing the certificates, subject only to further proceedings in which the state would bear the burden of proof. But the university has discontinued its reliance on the certificate procedure, as of June 10, 1965. The state now investigates prospective appointees by asking the candidate and others questions concerning his compliance with the laws. The candidate is given a chance to explain his doubts, not provided under the certificate procedure. Absolute refusal to answer is made grounds for [fol. 377] refusal to appoint; but this seems reasonable, in light of the opportunity to explain. Persons employed before June 10, 1965, shall not be deemed disqualified "solely by reason of" their failure to sign the Feinberg certificate. The State thus would have the burden of showing violations of the statutes, following the statutory procedures for dismissal as to teachers with tenure.

Plaintiffs maintain that teachers serving on contract and without tenure are denied procedural due process,

since they are guaranteed by the Regents' regulations only "such hearings . . . as [the school authorities] deem the exigencies warrant. . . ." In particular, plaintiffs point to the dismissal of Starbuck as evidence that the state will not give an adequate hearing to teachers without tenure.

It appears that after Starbuck failed to answer the question about subversive activities on his employment form, he was told that he must answer it yes or no, and could explain if he answered yes. He did not answer, and was dismissed. We understand the law of New York to be in [fol. 378] accordance with the advice given to Starbuck by the university officials. Although a teacher without tenure, Starbuck would have had an opportunity to explain and a right to a full hearing on whether or not he had violated the substantive provisions of the law, if he had answered the question yes. *Hughes v. Board of Higher Education*, 309 N.Y. 319, 130 N.E. 2d 638 (1955); *Lederman v. Board of Education*, 276 App. Div. 527, 96 N.Y.S. 2d 466 (2d Dep't 1950), *aff'd sub nom. Thompson v. Wallin*, 301 N.Y. 476, 95 N.E. 2d 806 (1950), *aff'd sub nom. Adler v. Board of Education*, 342 U. S. 485 (1952). In light of this opportunity for explanation and a hearing, Starbuck cannot complain of lack of procedural due process. His dismissal was for insubordination in refusing to answer a relevant inquiry, and the Constitution does not require any hearing on one's reasons for refusal to cooperate with a relevant inquiry. See *Nelson v. County of Los Angeles*, 362 U.S. 1 (1960); *Konigsberg v. State Bar*, 366 U.S. 36 (1961); and *In re Anastaplo*, 366 U.S. 82 (1961). *Slochower v. Board of Education*, 350 U.S. 551 (1956) may be distinguished, since in that case the Court found no necessary [fol. 379] connection between Slochower's refusal to answer questions concerning activities twelve years before, put to him not by a school board but by a congressional committee, and his unfitness for service in the New York schools. Here Starbuck refused to answer a question put to him by school authorities concerning whether or not

he presently advocated the violent overthrow of government.

Plaintiffs also assert that the provisions of Section 3022 of the Education Law and Section 105(1) of the Civil Service Law which make membership in the Communist Party prima facie evidence of disqualification for employment by the state are contrary to procedural due process. The same argument was before the Supreme Court in *Adler*, and the Court decisively rejected it:

Membership in a listed organization found to be within the statute and known by the member to be within the statute is a legislative finding that the member by his membership supports the thing the organization stands for, namely, the overthrow of government by unlawful means. We cannot say that such a finding is contrary to fact or that "generality of experience" points to a different conclusion. Disqualification follows therefore as a reasonable presumption from such membership and support. Nor is there here a problem of procedural due process. The presumption is not conclusive but arises only in a hearing where the person against whom it may arise has a full opportunity to rebut it. . . . Where, as here, the relation between the fact found and the presumption is clear and direct and is not conclusive, the requirements of due process are satisfied.

342 U.S. 485, 494-96 (1952).

[fol. 380] In support of its position, the Court looked to the interpretation of the statute by the New York courts below. *Lederman v. Board of Education*, 276 App. Div. 527, 530, 96 N.Y.S. 2d 466, 470 (2d Dept. 1950), *aff'd sub nom. Thompson v. Wallin, supra*, 806, 815 (1950). The courts of New York not having changed their interpretation of the presumption contained in these statutes, see *Hughes v. Board of Higher Education*, 309 N.Y. 319, 130 N.E. 2d 638 (1955), there is no reason to hold the presumption violative of due process today.

2. "Vagueness"

The plaintiffs maintain that breadth of language renders the statutes under attack unconstitutional, because it tends to deter legitimate expression as well as expression which the State is justified in regulating. It is, of course, true that strict standards of draftsmanship are to be applied to a statute having a potentially inhibiting effect on speech; "a man may be the less required to act as his peril here, because the free dissemination of ideas may be the loser." *Smith v. California*, 361 U.S. 147, 151 (1959). However, we must examine the present statutory complex, as implemented by the Regents' regulations and as interpreted by the New York courts, to see whether it has a tendency to deter legitimate discussion and activities as well as to [fol. 381] carry out the permissible objective of preventing the advocacy of violent overthrow of government.

Subsection 2 of Section 3022 of the Education Law provides that the Board of Regents shall list organizations found to "advocate, advise, teach or embrace the doctrine that the government of the United States or of any state or political subdivision thereof shall be overthrown . . . by force" or found to "advocate, advise, teach, or embrace the duty, necessity, or propriety of adopting any such doctrine. . . ." Section 105(1) of the Civil Service Law lists three causes for ineligibility for employment in the state civil service; wilfully advocating, advising, or teaching the doctrine of violent overthrow of government; publishing, editing, or selling any printed matter containing such a doctrine, while advocating the necessity or propriety of adopting the doctrine; and organizing or becoming a member of a group of persons advocating such a doctrine.

Legitimate activities are not deterred by these sections of the statutes. Not teaching Communist theory in a course in economic or political history; only teaching that government shall or should "be overthrown . . . by force" is a basis for adverse consequences under these sections. Not innocent membership in the Communist Party, in contrast to

what could have been deterred by the oath struck down in *Wieman v. Updegraff*, 344 U.S. 183 (1952); only knowing membership in an organization advocating the violent overthrow of government is grounds for ineligibility for state employment. *Lederman v. Board of Education*, 276 App. Div. 527, 530, 96 N.Y.S. 2d 466, 470 (2d Dept. 1950), *aff'd sub nom. Thompson v. Wallin*, 301 N.Y. 476, 95 N.E. 2d 806 (1950), *aff'd sub nom. Adler v. Board of Education*, 342 U.S. 485 (1952); see also *Adler v. Wilson*, 282 App. Div. 418, 123 N.Y.S. 2d 655 (3d Dept. 1953).

Nor do these sections deter all distribution of Communist propaganda, or the editing of Communist literature. Under Section 105(1)(b), a distributor or editor of subversive literature must also advocate or embrace the "duty, necessity, or propriety" of adopting the doctrine of violent overthrow, before he can be disqualified from state employment. Finally, the sections just described do not deter representing the Communist Party in a lawsuit, or defending the constitutional rights of the Communist Party in a newspaper article, or voting for a candidate also supported by the Communist Party—the legitimate activities which the Supreme Court feared might be deterred by the broad oaths struck down in *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961) (state employees had to swear that they had never lent their "aid, support, advice, counsel, or influence to the Communist Party") and in *Baggett v. Bullitt*, 377 U.S. 360 (1964) (state teachers had to swear, among other things, that they did not aid any person to aid in [fol. 383] the commission of any act intended to alter the constitutional form of government by force or violence).

The Supreme Court in *Baggett* made clear that narrowly drawn statutes aimed wholly at the control of subversive activities would be upheld as constitutional. The Court distinguished the broad oath before it in *Baggett* from the oath upheld in *Gerende v. Board of Supervisors*, 341 U.S. 56 (1951), on the grounds that the *Gerende* oath required a candidate for state office to swear only that he is not engaged "in one way or another in the attempt to overthrow

the government by force or violence," and that he is not knowingly a member of an organization engaged in such an attempt. The sections of the New York statutes just analyzed proscribe no more than the oath upheld in *Gerende*, and seem less questionable even than *Gerende* since they place the burden of taking the first step and the burden of proof on the official challenging eligibility. The Supreme Court upheld these sections, 3022 of the Education Law and 105(1) and (2) of the Civil Service Law (the last two subsections then being known as 12(a) of the Civil Service Law), in *Adler v. Board of Education*, 342 U.S. 485 (1952), although the sections were attacked on grounds of vagueness at that time. We see no reason to change the result of that case.

The remaining sections of the statutes under attack seem at first glance more general. Section 3021 of the Education [fol. 384] Law provides for the removal of school employees "for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts" while employed in the school system. Section 105(3) of the Civil Service Law provides for the removal of civil servants from office for "treasonable or seditious" words or acts.

However, the 1958 amendments to section 105(3) greatly restricted the scope of that subsection. N.Y. Sess. Laws 1958, ch. 790, sec. 105. "Treasonable words or acts", for the purpose of 105(3), now must come within the definition of "treason" in Section 2380 of the Penal Law:

"1. Levying war against the people of the state within this state; or, 2. A combination of two or more persons by force to usurp the government of the state or to overturn the same, shown by a forcible attempt, made within the state, to accomplish that purpose; or, 3. Adhering to the enemies of the state, while separately engaged in war with a foreign enemy, in a case prescribed by the constitution of the United States, as giving to such enemies aid and comfort within the state or elsewhere."

We do not understand the plaintiffs to challenge this definition of treason on grounds of vagueness; it is as good as can be done, and resembles the definition used in Article III, section 3, of the Federal Constitution. Even the third clause of the New York definition is narrow, having been [fol. 385] construed to apply only in wars against foreign enemies waged by the State of New York separately from the United States. *People v. Lynch*, 11 Johns, R. 549 (1814).

Similarly, "seditious acts and utterances", for the purpose of section 105(3), now must come within the definition of "criminal anarchy" in section 160 of the Penal Law:

"the doctrine that organized government should be overthrown by force or violence or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means."

This is a definition closely connected with the state's legitimate interest in self-preservation, and as such is within the realm of the constitutional under *Gerende*, *Cramp*, and *Baggett*. We note in passing that the 1958 amendment to section 105(3) refers to section 160 of the Penal Law, entitled "Criminal anarchy defined". The looser language of section 161 of the Penal Law, entitled "Advocacy of criminal anarchy", is not now before us, although the plaintiffs seem to wish that it were.

The 1958 amendments of section 105(3) did not, by their terms, extend to the parallel language of section 3021. But the history of the two sections—born as successive sections of an act of 1917, N.Y. Sess. Laws 1917, ch. 416, secs. 2 and 3—together with the identity of language in the two sections, [fol. 386] indicates that the two must be construed *in pari materia*. The presumption that statutes "will be construed in such a way as to avoid the constitutional question presented", *Baggett v. Bullitt*, 377 U.S. 360, 375 (1964), reinforces us in the conclusion that the words "seditious or treasonable acts or words" in section 3021, like their identical twins in section 105(3), must be defined by reference to sections 2380 and 160 of the Penal Law. When this is done,

sections 3021 and 105(3)—like the separable but related Sections 3022 and 105(1) and (2)—become sharply defined, and can withstand any possible attack on grounds of vagueness.

III. Conclusion.

We find constitutional section 105 of the Civil Service Law, Sections 3021 and 3022 of the Education Law, Section 244 of Article XVIII of the Rules of the Board of Regents, and the procedures under these statutes and rules now in effect at the State University of New York at Buffalo. We accordingly give judgment for the defendants, and deny the plaintiffs all the relief requested by them.

[fol. 387]

FOOTNOTES

¹ *Civil Service Law*

§105. *Subversive activities: disqualification.*

1. Ineligibility of persons advocating overthrow of government by force or unlawful means. No person shall be appointed to any office or position in the service of the state or of any civil division thereof, nor shall any person employed in any such office or position be continued in such employment, nor shall any person be employed in the public service as superintendent, principal or teacher in a public school or academy or in a state college or any other state educational institution who:

(a) by word of mouth or writing wilfully and deliberately advocates, advises or teaches the doctrine that the government of the United States or of any state or of any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means; or

(b) prints, publishes, edits, issues or sells any book, paper, document or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that the government of the United States or of any state or of any political subdivision thereof should be overthrown by force, violence or any unlawful means, and who advocates, advises, teaches, or embraces the duty, necessity or propriety of adopting the doctrine contained therein; or

(c) organizes or helps to organize or becomes a member of any society or group of persons which teaches or advocates that the government of the United States or of any state or of any political subdivision thereof shall be overthrown by force or violence, or by any unlawful means.

For the purpose of this section, membership in the communist party of the United States of America or the communist party of the state of New York shall constitute prima facie evidence of disqualification for appointment to or retention in any office or position in the service of the state or of any city or civil division thereof.

[fol. 388]

2. A person dismissed or declared ineligible pursuant to this section may within four months of such dismissal or declaration of ineligibility be entitled to petition for an order to show cause signed by a justice of the supreme court, why a hearing on such charges should not be had. Until the final judgment on said hearing is entered, the order to show cause shall stay the effect of any order of dismissal or ineligibility based on the provisions of this section; provided, however, that during such stay a person so dismissed shall be suspended without pay, and if the final determination shall be in his favor he shall be restored to his position with pay for the period of such suspension less the amount of compensation which he may have earned in any other employment or occupation and any unemployment insurance benefits he may have received during such period. The hearing shall consist of the taking of testimony in open court with opportunity for cross examination. The burden of sustaining the validity of the order of dismissal or ineligibility by a fair preponderance of the credible evidence shall be upon the person making such dismissal or order of ineligibility.

3. Removal for treasonable or seditious acts or utterances. A person in the civil service of the state or of any civil division thereof shall be removable therefrom for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position. For the purpose of this subdivision, a treasonable word or act shall mean "treason", as defined in the penal law; a seditious word or act shall mean "criminal anarchy" as defined in the penal law.

Education Law

§3021. *Removal of superintendents, teachers and employees for treasonable or seditious acts or utterances.*

A person employed as superintendent of schools, teacher or employee in the public schools, in any city or school district of the

state, shall be removed from such position for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position.

[fol. 389]

§3022. *Elimination of subversive persons from the public school system.*

1. The board of regents shall adopt, promulgate, and enforce rules and regulations for the disqualification or removal of superintendents of schools, teachers or employees in the public schools in any city or school district of the state and the faculty members *and all other personnel and employees of any college or other institution of higher education owned and operated by the state or any subdivision thereof* who violate the provisions of sections three thousand twenty-one of this article or who are ineligible for appointment to or retention in any office or position in such public schools or such institutions of higher education on any of the grounds set forth in section twelve-a of the civil service law and shall provide therein appropriate methods and procedure for the enforcement of such sections of this article and the civil service law.

2. The board of regents shall, after inquiry, and after such notice and hearing as may be appropriate, make a listing of organizations which it finds to be subversive in that they advocate, advise, teach or embrace the doctrine that the government of the United States or of any state or of any political subdivision thereof shall be overthrown or overturned by force, violence or any unlawful means, or that they advocate, advise, teach or embrace the duty, necessity or propriety of adopting any such doctrine, as set forth in section twelve-a of the civil service law. Such listings may be amended and revised from time to time. The board, in making such inquiry, may utilize any similar listings or designations promulgated by any federal agency or authority authorized by federal law, regulation or executive order, and for the purposes of such inquiry, the board may request and receive from such federal agencies or authorities any supporting material or evidence that may be made available to it. The board of regents shall provide in the rules and regulations required by subdivision one hereof that membership in any such organization included in such listing made by it shall constitute prima facie evidence of disqualification for appointment to or retention in any office or position in the public schools of the state.

[fol. 390]

3. The board of regents shall annually, on or before the fifteenth day of February, by separate report, render to the legislature, a full statement of measures taken by it for the enforcement of such provisions of law and to require com-

pliance therewith. Such reports shall contain a description of surveys made by the board of regents, from time to time, as may be appropriate, to ascertain the extent to which such provisions of law have been enforced in the city and school districts of the state.

Section 12-a of the Civil Service Law, referred to in Section 3022 of the Education Law, now appears as Section 105(1) and (2) of the Civil Service Law, N.Y. Sess. Laws 1958, ch. 790, §105.

² The text of the preamble is as follows:

"Declaration of legislative intent.

The legislature takes cognizance that section three thousand twenty-two of the education law makes provision for the implementation and enforcement of section twelve-a of the civil service law [now Section 105 of the Civil Service Law] with respect to the elimination of subversive persons from the public school system; that such section three thousand twenty-two authorizes the board of regents, after notice and hearing, to list

'organizations which it finds to be subversive in that they advocate, advise teach or embrace the doctrine that the government of the United States or of any state or of any political subdivision thereof shall be overthrown or overturned by force, violence or any unlawful means, or that they advocate, advise, teach or embrace the duty, necessity or propriety of adopting any such doctrine, as set forth in section twelve-a of the civil service law'; that the board of regents, after notice and hearing, has so listed the communist party of the United States of America and the communist party of the state of New York; and that [fol. 391]

pursuant to such section three thousand twenty-two and rules and regulations adopted thereunder membership in either such organization constitutes prima facie evidence of disqualification for appointment to or retention in any office or position in the public schools of the state. It is the intent of the legislature to apply to all officers and employees subject to section twelve-a of the civil service law the same provision that membership in either of such organizations shall constitute prima facie evidence of disqualification for appointment or continued employment."

Leonard P. Moore, U.S.C.J.

Harold P. Burke, Ch. J., U.S.D.C.

John O. Henderson, U.S.D.J.

January 5th, 1966.

[fol. 392]

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

Civil Action File No. 10,994

**HARRY KEYISHIAN, GEORGE HOCHFELD, NEWTON GARVER,
RALPH N. MAUD and GEORGE E. STARBUCK,**

vs.

**BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW
YORK, BOARD OF TRUSTEES OF THE STATE UNIVERSITY OF
NEW YORK, STATE UNIVERSITY OF NEW YORK AT BUFFALO,
CLIFFORD C. FURNAS, J. LAWRENCE MURRAY, ARTHUR
LEVITT, DEPARTMENT OF CIVIL SERVICE COMMISSION OF
THE STATE OF NEW YORK, MARY GOODE KRONE and ALEX-
ANDER A. FALK.**

JUDGMENT—January 5, 1966

This action came on for hearing before the Court, Honorable Leonard P. Moore, U.S.C.J., Harold P. Burke and John O. Henderson, United States District Judges, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged that judgment be granted in favor of the defendants and denying the plaintiffs all relief requested by them.

Dated at Buffalo, New York, this 5th day of January, 1966.

Roland E. Logel, Clerk of Court.

~~100~~ [File endorsement omitted]

[fol. 393]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
Civil Action No. 10,994

HARRY KEYISHIAN, GEORGE HOCHFELD, NEWTON GARVER,
RALPH N. MAUD, and GEORGE E. STARBUCK, Plaintiffs,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW
YORK, BOARD OF TRUSTEES OF THE STATE UNIVERSITY OF
NEW YORK, STATE UNIVERSITY OF NEW YORK AT BUFFALO,
SAMUEL B. GOULD, CLIFFORD C. FURNAS, J. LAWRENCE
MURRAY, ARTHUR LEVITT, DEPARTMENT OF CIVIL SERVICE
OF THE STATE OF NEW YORK, CIVIL SERVICE COMMISSION
OF THE STATE OF NEW YORK, MARY GOODE KRONE, and
ALEXANDER A. FALK, Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed February 14, 1966

I. Notice is hereby given that Harry Keyishian, George Hochfeld, Newton Garver, Ralph N. Maud, and George E. Starbuck, the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the judgment dismissing the complaint and the order denying plaintiffs' request for all relief, entered in this action on January 5, 1966.

This appeal is taken pursuant to 28 U.S.C.A. §1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in such transcript the following:

1. Complaint of plaintiffs herein.

2. Answers in Opposition by the State Attorney General and the University of the State of New York. [fol. 394]
3. Stipulation of Fact and exhibits thereto.
4. The order and/or judgment dismissing complaint and denying relief.
5. Decision of January 5, 1966.

III. The following questions are presented by this appeal:

1. Whether the New York statutory complex, together with the administrative regulations, rules, and certificates, unconstitutionally condition public employment of teachers and scholars at the university level in contravention of First Amendment freedoms.
2. Whether the New York statutory complex involved, together with the administrative rules, regulations, procedures and certificates unconstitutionally deprive plaintiffs of due process of law.
3. Whether the New York statutory complex involved, together with the administrative rules, procedures and certificates constitute a bill of attainder.
4. Whether the statutory complex involved, together with the rules, procedures, regulations and certificates constitute an ex post facto enactment.

Dated: February 14, 1966.

Lipsitz, Green, Fahringer, Roll, Schuller and James (former Lipsitz, Green & Fahringer), By Richard Lipsitz, Attorneys for Plaintiffs, Office & Post Office Address, One Niagara Square, Buffalo, New York 14202.

[fol. 395] To:

Louis J. Lefkowitz, Esq., Attorney General of the State of New York, Attorney for Defendants Board of Regents of the University of the State of New York, Arthur Levitt, Department of Civil Service of the State of New York, Civil Service Commission of the State of New York, Mary Goode Krone and Alexander A. Falk, The Capitol, Albany, New York.

John C. Crary, Jr., Esq., Attorney for Defendants Board of Trustees of the State University of New York; State University of New York at Buffalo, Clifford C. Furnas; Samuel B. Gould and J. Lawrence Murray, Thurlow Terrace, Albany, New York.

[fol. 396] Proof of Service (omitted in printing).

[fol. 398] [File endorsement omitted]

[fol. 399] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 400]

SUPREME COURT OF THE UNITED STATES

No. 1226, October Term, 1965

HARRY KEYISHIAN, et al., Appellants,

v.

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE
STATE OF NEW YORK, et al.

ORDER NOTING PROBABLE JURISDICTION—June 20, 1966

Appeal from the United States District Court for the
Western District of New York.The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted.